

**CITY OF SANTA FE, NEW MEXICO**

**ORDINANCE NO. 2005-30**

**AN ORDINANCE**

**REPEALING SECTION 14-8.11 INCLUSIONARY ZONING / HOUSING OPPORTUNITY PROGRAM; CREATING A NEW SECTION 14-8.11 SANTA FE HOMES PROGRAM AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY; REPEALING CHAPTER 26 HOUSING OPPORTUNITY PROGRAM AND CREATING A NEW CHAPTER 26 SANTA FE HOMES PROGRAM AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

**Section 1. Section 6-4.3 SFCC 1987 (being Ord. #1984-19, §4 as amended) is amended to read:**

**6-4.3 Powers and Duties.**

The commission shall advise the governing body of the city in:

- A. Administration of the community development block grant program in accordance with the city's adopted consolidated plan; and
- B. Establishing a general plan for the city relating to economic and other community development issues.

**Section 2. [REPEAL.] Section 14-2.3(C)(6) SFCC 1987 (being Ord. #2001-38 as amended) is repealed.**

**Section 3. Section 14-3.1(E)(1) SFCC 1987 (being Ord. #2001-38) is amended to read:**

- (1) Applicability

Pre-application conferences are required prior to submittal of applications for:

- (a) Amendment of the number, shape, boundary, or area of any district, whether by annexation or a rezoning.
- (b) Subdivisions consisting of 10 or more lots.
- (c) Any residential development request that is subject to the Santa Fe Homes Program set forth in §14-8.11.

**Section 4. Section 14-3.1(F)(5)(g) SFCC 1987 (being Ord. #2001-38 as amended) is amended to read:**

- (g) Effect upon availability of affordable housing and availability of housing choices for all Santa Fe residents

Where applicable, the applicant shall state how existing City Code requirements for the Santa Fe Homes Program and the policies of the City General Plan are met. Considerations may include, but are not limited to: creation, retention or improvement of affordable housing; how the project contributes to meeting the needs for various housing types (serving different ages, incomes and family sizes) to maintain the unique heterogeneous character of the City; whether or how the project increases or decreases the supply of housing for which there is an identified need; whether the project contributes to a more even distribution of this housing throughout the City; the creation or retention of affordable business space, whether or how the project increases the availability of all housing types close to the City center or neighborhood centers.

**Section 5. Section 14-3.5(C) SFCC 1987 (being Ord. #2001-38) is amended to read:**

- (C) Approval Criteria

The Planning Commission shall study rezoning proposals to determine:

- (1) The need and justification for the change;

- (2) The effect of the change, if any, on the property and on surrounding properties;
- (3) Whether the amount of land proposed for rezoning and the proposed use for the land is consistent with the City's policies regarding the provision of urban land sufficient to meet the amount, rate, and geographic location of the growth of the City;
- (4) The ability of the existing infrastructure such as the streets system, sewer and water lines, and public facilities such as fire stations and parks can accommodate the impacts of the proposed development. If such impacts cannot be accommodated, the City may require the developer to participate wholly or in part in the cost of construction of off-site facilities in conformance with the City's off-site facilities regulation;
- (5) If the proposed rezoning creates a need for an additional major public utility expansion. If such a need is determined then the developer may be asked to contribute a proportional fair share of the cost of the expansion.

**Section 6. Section 14-3.5(D)(3) SFCC 1987 (being Ord. #2001-38) is amended to read:**

- (3) In deciding whether the rezoning shall be rescinded, the Planning Commission and the Governing Body shall determine one or more of the following:
  - (a) Existing infrastructure, such as streets, sewer and water, and public facilities such as fire stations and parks can no longer accommodate the rezoning; or
  - (b) The rezoning no longer complies with the General Plan; or
  - (c) The proposed development is no longer in conformance with the City's zoning ordinance; or
  - (d) The market conditions or, amount, rate and location of the growth of the City have changed such that there is no longer a need or justification for

the rezoning; or

- (e) Neighborhood conditions have changed such that the effect of the rezoning is greater on surrounding properties than originally anticipated.

**Section 7. Section 14-3.7(B)(4)(a) SFCC 1987 (being Ord. #2001-38) is amended to read:**

- (a) Applicability  
Preliminary plat procedures are not required for inheritance and family transfer subdivisions.

**Section 8. Section 14-4.3(I)(6)(a) (being Ord. #2001-38) is amended to read:**

- (a) The number of dwelling units or area of commercial use as approved by the Governing Body of the City drawn as set forth in paragraph (5) above shall appear in the plan. The number of dwelling units and area of commercial use, if any, as approved by the Governing Body of the City and drawn on the master plan shall constitute the maximum number of dwelling units, unless an increase in the number of dwelling units is agreed to in carrying out the Santa Fe Homes Program as set forth in §14-8.11, or area of commercial use permitted for each tract.

**Section 9. Section 14-4.3(I)(7) SFCC 1987 (being Ord. #2001-38 as amended) is amended to read:**

- (7) Application and Review of Development on Individual Tracts; Administrative Procedure  
Subsequent to the zoning of a land parcel to planned residential community district status by the Governing Body of the City, the authority to review and approve development proposals on individual tracts resides with the Planning Commission as provided by law and ordinance. The subdivision of the entire

tract into smaller tracts by preliminary subdivision plat shall occur prior to the approval of final development plans for any individual tract. If the Planning Commission does not act on a request for development within ninety days after the initial review by the Planning Commission, the applicant may request review of the proposed development by the Governing Body. An increase in the number of dwelling units or area of commercial use for any tract above that approved by the Governing Body of the City requires a recommendation by the Planning Commission and approval by the Governing Body of the City, unless an increase in the number of dwelling units is agreed to in carrying out the requirements of the Santa Fe Homes Program set forth in §14-8.11. The following regulations apply to the respective development of individual tracts:

- (a) The development of tracts proposed for single-family detached dwellings on conventionally platted lots shall conform to the requirements for single-family structures in residential R-1 through R-6 districts, the Santa Fe Homes Program, set forth in §14-8.11 and §26-1. The provisions of the land subdivision regulations shall apply to detached, single-family residences on conventionally platted lots;
- (b) The development of tracts proposed for multiple-family structures shall conform to the provisions for multiple-family structures in RM districts and the Santa Fe Homes Program set forth in §14-8.11 and §26-1. In the course of reviewing the preliminary development plan, the Planning Commission may require changes in the preliminary plan as a condition of Planning Commission approval. The applicant shall prepare a final development plan to be followed in construction operations. The final development plan shall be submitted to the Planning Commission for

approval, together with final drafts for the homeowners' association, to include articles of incorporation, bylaws, covenants, and restrictions. The final development plan, or successive stages thereof, as approved becomes the final plat and the basis for issuance of zoning and building permits and for acceptance of public dedications. The applicant shall comply with all the requirements set forth in §14-5.7(I)(4).

- (c) The development of tracts designated for single-family attached structures shall conform to the provisions set forth in for the R-7, R-8 and R-9 residential districts in Article 14-7, the Santa Fe Homes Program set forth in §14-8.11, and §26-1. The Planning Commission may grant variances from those provisions as set forth in §14-2.3(C)(3).
- (d) In addition to complying with the regulations set forth in the shopping center district, SC, §14-4.3(K), the following requirements apply:
  - (i) Neighborhood commercial uses may be permitted in the planned residential community district. Where neighborhood commercial uses are approved as part of the master plan, the maximum ground area for such neighborhood commercial uses shall be calculated by multiplying the number of residents by 35 square feet. The number of residents per household shall be set at three and six-tenths for owner-occupied dwellings and three and seven-tenths for renter-occupied dwellings, or as estimated by the United States Bureau of the Census;
  - (ii) A preliminary development plan drawn at a minimum scale of 50 feet to the inch with topography at contour intervals of two feet indicating existing drainage. This plan shall show with

appropriate dimensions, an arrangement of buildings; off-street parking and loading facilities; internal automotive and pedestrian circulation; ingress and egress from adjoining streets, service areas and facilities; drainage system; landscaping fences and walls; the size and location, orientation and type of all signs proposed; proposed lighting of the premises; and relation to all property within 200 feet of the tract. If it is proposed to develop the shopping center in stages, the stages and times of development shall be indicated; and

- (iii) The applicant shall prepare a final development plan to be followed in construction operations and submit it to the Planning Commission for approval. No building permit shall be issued until the Planning Commission approves the final development plan or the successive stages thereof. The applicant shall comply with all requirements set forth in §14-5.7(I)(4), procedures for final development plan approval.

**Section 10.      Section 14-4.3(J)(6)(a) SFCC 1987 (being Ord. #2001-38) is amended to read:**

- (a) The area of residential use and number of dwelling units and area and intensity of commercial use, as approved by the Governing Body of the City and drawn on the master plan shall constitute the maximum number of dwelling units and area and intensity of commercial use permitted for each tract, unless an increase in the number of dwelling units is agreed to in carrying out the Santa Fe Homes Program as set forth in §14-8.11.

**Section 11.      Section 14-4.3(J)(7) SFCC 1987 (being Ord. #2001-38) is amended to read:**

(7) Application and Review of Development on Individual Tracts; Administrative Procedure

Subsequent to the zoning of a land parcel to planned resort-residential community district status by the Governing Body of the City, the authority to review and approve development proposals on individual tracts resides with the Planning Commission as provided by law and ordinance. An increase in the number of dwelling units or area or intensity of commercial use for any tract above that approved by the Governing Body of the City requires a recommendation by the Planning Commission and approval by the Governing Body of the City, unless an increase in the number of dwelling units is agreed to in carrying out the Santa Fe Homes Program, set forth in §14-8.11. The following regulations apply to the respective development of individual tracts:

- (a) The development of parcels proposed for residential use shall comply with all applicable sections of this chapter with respect to submittals and procedures and standards, including the Santa Fe Homes Program set forth in §14-8.11, and §26-1.
- (b) The development of parcels for resort or recreational facilities, the following shall apply:
  - (i) A preliminary development plan drawn at a minimum scale of 50 feet to the inch with topography at contour intervals of two feet indicating existing drainage shall be submitted for approval by the Planning Commission. This plan shall show with appropriate dimensions, an arrangement of buildings; off-street parking and loading facilities; internal automotive and pedestrian circulation; ingress and egress from adjoining streets; service areas and



facilities; drainage system; landscaping; fences and walls; the size and location, orientation and type of all signs proposed; proposed lighting of the premises; and relations to all property within 200 feet of the tract. If it is proposed to develop the resort or recreational facilities in stages, the stages and times of development shall be indicated;

- (ii) The applicant shall prepare a final development plan to be followed in construction operations and submit it to the Planning Commission for approval. No building permit shall be issued until the Planning Commission approves the final development plan or the successive stages thereof. The applicant shall comply with all requirements set forth in §14-5.7(I)(4), procedures for final development plan approval; and
- (iii) Unless specifically waived by the Planning Commission, development shall comply with all applicable sections of this chapter.

**Section 12.     ~~[REPEAL.]~~     Section 14-7.1(B)(1)(a)(i)E. SFCC 1987 (being Ord. #2001-38) is repealed.**

**Section 13.     Section 14-7.1(B)(2)(a)(iv)A. SFCC 1987 (being Ord. #2001-38) is amended to read:**

- (iv) Increased Number of Allowable Dwelling Units
  - A. The allowable dwelling units for the site may be increased if allowed by the Santa Fe Homes Program and agreed to by the property owner and the city pursuant to a Santa Fe Homes Program (SFHP) agreement or in a certified SFHP

proposal, set forth in §14-8.11.

- B. In no case shall more dwelling units be constructed than described on the development plan approved by the Governing Body of the City as set forth in §14-3.8.
- C. If at the time of subdivision (including lot split) or other development approval of the site by the city, the maximum number of allowable dwelling units is reached, a note shall be placed on the plat or development plan prior to recording which prohibits a further increase in the number of dwelling units for the site unless approved by the Governing Body as a rezoning action or other action authorized by this Chapter.

**Section 14.     ~~[REPEAL.]~~     Section 14-7.1(B)(5)(b)(v) SFCC 1987 (being Ord. #2001-38) is repealed.**

**Section 15.     ~~[REPEAL.]~~     Section 14-8.11 SFCC 1987 (being Ord. 2001-38, §2 as amended) is repealed.**

**Section 16.     A new Section 14-8.11 SFCC 1987 is ordained to read:**

**14-8.11 ~~[NEW MATERIAL.]~~ SANTA FE HOMES PROGRAM**

**(A)     Authority**

The Santa Fe Homes Program is enacted pursuant to the authority set forth in §26-1.2.

**(B)     Adoption of the Santa Fe Homes Program**

The Governing Body has adopted the Santa Fe Homes Program as set forth in §26-1.

**(C)     Responsibilities**

The Planning and Land Use Department staff shall:

- (1) Administer and enforce all planning and land use ordinances that apply to development requests that are subject to this section.
- (2) Require, as part of the development review process, the applicant to prepare and submit a SFHP proposal to the Office of Affordable Housing to assure compliance with the SFHP Ordinance.
- (3) Administer provisions for development incentives in the development review process as set forth in this section.
- (4) Record the SFHP agreements with the respective subdivision plat or development plan at the County Clerk's office.
- (5) Where applicable, invoke sanctions for noncompliance with SFHP agreements at the request of the City Manager.

**(D) Applicability**

- (1) The SFHP shall apply to the following types of applications for development which propose dwelling units or buildings or portions of buildings which may be used for both nonresidential and residential purposes and manufactured home lots. SFHP applies to the residential portion of the development.
  - (a) Annexation pursuant to the petition process of Section 3-7-17 NMSA 1978 shall be subject to the SFHP requirements under the procedures of Paragraph 26-1.8 (C);
  - (b) Rezoning pursuant to §14-3.5, except those that only result in a family transfer as set forth in §14-3.7(E)(3)(b) or a division of land into two lots as set forth in §14-2.3(E)(1)(a).
  - (c) Subdivision plat, except a family transfer as set forth in §14-3.7(E)(3)(b) or a division of land into two lots as set forth in §14-2.3(E)(1)(a).
  - (d) Increase in density for approved master plan or development plan;

- (e) Development plan except those which require only staff approval;
  - (f) Projects located outside the City limits, requesting the extension of or connection to City utilities submitted to the City after August 23, 1999 up to the limits of the City's jurisdiction; or
  - (g) Building permits for the remodel of more than two dwelling units for the purpose of converting rental units to ownership units.
- (2) The SFHP shall not apply to the following:
- (a) Any development or portion thereof which is subject to any formal, written and binding agreement entered into prior to August 15, 2005, with the City or Santa Fe County which if within said agreement the signatories agreed to provide affordable housing or payment in lieu thereof; or
  - (b) Dwelling units or manufactured home lots for a school, hospital or similar institution to be used exclusively by its employees or enrolled students and their families. If the dwelling units are no longer exclusively used by its employees or enrolled students and their families, the SFHP shall apply at the time the units are converted.
- (3) Petitioners for annexations and the Office of Affordable Housing shall negotiate all terms for providing affordable housing on site including the distribution of development types and the number of SFHP units required or alternate means of compliance. The number of SFHP units required or alternate means of compliance may be in excess of that required by SFHP. These terms shall be included in the annexation agreement. To the extent practicable, all other SFHP requirements shall apply to annexations. In no case shall the agreement provide for less affordable housing or a lesser in-lieu contribution than required by SFHP.

As the property is developed, a separate SFHP agreement in compliance with the annexation agreement shall be recorded with each subdivision plat or development plan.

- (4) All provisions of the prior ordinance, titled Housing Opportunity Program (HOP), remain in full force and effect with respect to any and all agreements executed by the City and others which were required by HOP or incorporated HOP provisions by reference. Accordingly, the Office of Affordable Housing shall be responsible for administering such agreements and shall continue to use and annually update the administrative procedures for the HOP ordinance until such time as all obligations under such agreements have been satisfied.

**(E) Pre-submission Conference, Santa Fe Homes Program Proposals and Agreements**

Presubmission conferences, SFHP proposals and SFHP agreements shall be required as set forth in §26-1.

**(F) Santa Fe Homes Program Requirements**

Thirty percent of the total number of dwelling units or manufactured home lots in an SFHP development shall be SFHP units and meet all requirements of Section 26-1 SFCC 1987. Fifteen percent of the total number of dwelling units or manufactured home lots offered for rent in an SFHP development shall be SFHP units and meet all requirements of Section 26-1 SFCC 1987.

**(G) Development Incentives**

**(1) Density Bonus**

- (a) Any developer who is subject to and complying with SFHP shall be entitled to an additional density bonus of 15 percent over the density allowed by the zoning district.
- (b) A density bonus is the right to build the described percentage of

residential units, in addition to those that are otherwise allowed by the zoning district, in accordance with the following standards and procedures:

- (i) Base units allowed shall mean the total number of units that would otherwise be allowed by the zoning district.
- (ii) In calculating any bonus unit(s), the base units allowed in the development shall be multiplied by 15 percent. If the result is other than a whole number, the number shall be rounded down if less than 0.5, and rounded up if 0.5 or more.
- (c) Any such bonus will not require a General Plan amendment or approval by the Governing Body unless appealed pursuant to §14-3.17.
- (d) Except where the Planning Commission may be authorized to grant a variance or waiver as set forth in Chapter 14, such a density increase shall not negate, supersede or limit other City code provisions that limit the number of units that can be built on the site.

**(2) Fee Waivers**

Fees for SFHP developments subject to and complying with the SFHP requirements shall be reduced as follows:

- (a) Development review and building permit fees shall be reduced proportionately to the number of SFHP units certified by the Office of Affordable Housing; and
- (b) Impact fees as set forth in §14-8.14 and utility expansion charges as set forth in Chapters 22 and 25 SFCC 1987 shall be reduced at the time of application for SFHP units.

**(3) Other**

- (a) For the purpose of offsetting water demand under Section 1.3.3 of the City's Water Budget Administrative Procedures established by §14-8.13(C) (Water Budget Ordinance), all SFHP units shall qualify for Retrofit Option "C".
- (b) For the purposes of reducing the consumptive water rights required to be transferred under §14-8.16(D)(2) (Water Rights Transfer Ordinance), all SFHP units shall qualify as a low-priced dwelling.

**(H) Enforcement**

Enforcement of the Santa Fe Homes Program shall occur as set forth in §§14-11.5 and 26-1.19.

**(I) Appeals**

- (1) Any applicant aggrieved of a decision of city staff regarding the SFHP provisions shall appeal to the governing body.
- (2) The applicant may proceed with other submissions related to the development request while any appeal is being considered.
- (3) Appeals shall be filed within thirty (30) days of the action appealed.

**Section 17. [REPEAL.] Section 14-8.13(B)(12) SFCC 1987 (being Ord. #2002-29) is repealed.**

**Section 18. Section 14-8.14(D)(2) SFCC 1987 (being Ord. #2003-32 §1) is amended to read:**

- (2) Application for waivers of impact fees shall be made at the time of application for a building permit. Application for reimbursement when waivers were not previously requested or granted shall be made after sale or rental of the unit. Applications shall be reviewed by the ~~[Community Services Department]~~ Office of Affordable Housing. Waivers or reimbursements for low priced dwelling units

may be provided, as follows:

- (a) Impact fees may be waived for a low priced dwelling unit, as defined in this chapter, if the following are met:
  - (i) The unit is built by or for a nonprofit affordable housing organization; and
  - (ii) The unit is sold or rented to a household earning less than 80 percent of the area median income as certified by a nonprofit housing organization approved by the Office of Affordable Housing; and
  - (iii) The unit cannot be resold or rerented to a household earning more than 80 percent of the area median income for a period of thirty years.
- (b) Impact fees may be reimbursed for a low priced dwelling unit, as defined in this chapter, if the following are met:
  - (i) The unit is built by someone other than a nonprofit affordable housing organization; and
  - (ii) The unit is sold or rented to a household earning less than 80 percent of the area median income as certified by a nonprofit affordable housing organization, approved by the Office of Affordable Housing; and
  - (iii) The unit cannot be resold or rerented to a household earning more than 80 percent of the area median income for a period of thirty years.

**Section 19. Section 14-11.5 (D) SFCC 1987 (being Ord. #2001-38) is repealed and a new**

**Section 14-11.5 (D) SFCC 1987 is ordained to read:**



**(D) Santa Fe Homes Program Violations; Penalties**

**(1) Inside the City Limits**

- (a) It shall be unlawful for any property owner subject to the Santa Fe Homes Program to violate any provision of or fail to comply with any of the requirements of §14-8.11 or Article 26-1 SFCC.
- (b) Whenever the city finds that a property owner has violated or is violating a requirement of §14-8.11 or Article 26-1 SFCC, the city shall issue a written notice of violation.
- (c) A notice of violation shall:
  - (i) Set forth the specific violation found;
  - (ii) Establish a specific and reasonable period of time for the correction of the violation found;
  - (iii) State that failure to comply with the notice may result in the following sanctions, depending upon which is deemed most effective and appropriate considering the nature of the noncompliance:
    - A. Withholding of the recording of plats or plans;
    - B. Withholding of building permits;
    - C. Issuing stop work orders;
    - D. Revoking building permits; or
    - E. Withholding or revoking certificates of occupancy.
  - (iv) Be hand delivered to the property owner or mailed registered mail, return receipt requested to the last-known address.
  - (v) Inform the property owner they may request a hearing.
- (d) The hearing shall be conducted by the director of the Office of

Affordable Housing after giving notice to the person requesting the hearing.

- (i) All parties shall be allowed to respond and present evidence and argument on all issues involved.
- (ii) A record of the hearing shall be made.
- (iii) Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
- (iv) Notice of the final decision shall be in writing and hand delivered to the property owner or mailed registered mail, return receipt requested to the last-known address.
- (e) Decisions made by the director of the office of affordable housing shall be final and may be appealed to district court.
- (f) If the property owner fails to comply with the final decision, the Office of Affordable Housing shall notify the City Manager and the Planning and Land Use Department of the noncompliance and request that applicable sanctions be imposed.

(2) Outside the City Limits

If, after having been given notice as set forth in §26-1.19, a property owner subject to a Santa Fe Homes Program agreement fails to comply with this §14-8.11 or Article 26-1, the Office of Affordable Housing may request that the City Manager authorize the City Attorney's office to pursue enforcement of specific performance requirements in accordance with the SFHP agreement in an appropriate court of law.

**Section 20     [REPEAL.]     The following definitions in Article 14-12 SFCC 1987 (being Ord. #2001-38 as amended) are repealed:**

#### ~~[DEVELOPMENT TYPES~~

~~Development Type "A" means a residential development in which the average sales price or rent of at least 70 percent of all units for sale or for rent are affordable to households with incomes at or below 80 percent of the area median income, using a four person household for home buyers and a three person household for renters and as further described in §26-1. Developers shall give first priority in the sale or rent of these units to households earning no greater than 80 percent of the area median household income.~~

~~Development Type "B" means a residential development in which all units for sale or for rent are affordable to a three person household with an income under 120 percent of the area median income, unless the development is defined as a development type "A" and as further described in §26-1.~~

~~Development Type "C" means a residential development in which a) one or more units for sale or for rent are priced to be affordable to a three person household with an income above 120 percent of the area median income; and (b) the average price does not exceed a price affordable to a three person household with an income at 200 percent of the area median income and as further described in §26-1.~~

~~Development Type "D" means a residential development in which units for sale or rent are, on average, affordable to a three person household with an income over 200 percent of the area median income and as further described in §26-1.~~

#### ~~HOP UNIT~~

~~A dwelling unit required to be provided on a site by a HOP developer or HOP property owner to satisfy the Housing Opportunity Program requirements set forth in §26-1.]~~

**Section 23. The following definition in Article 14-12 SFCC 1987 (being Ord. #2001-38 as amended) are amended to read:**

#### **AREA MEDIAN INCOME**

The median income for the Santa Fe metropolitan statistical area as adjusted for various household sizes and published and revised periodically by the United States Department of Housing and Urban Development. ~~[The Santa Fe metropolitan statistical area includes Santa Fe and Los Alamos counties.]~~

**Section 24.     ~~[NEW MATERIAL.]~~ The following definitions in Article 14-12 SFCC 1987 (being Ord. #2001-38 as amended) are added:**

*SFHP* means Santa Fe Homes Program.

*SFHP developer* means an owner of a property subject to any SFHP requirements, who is carrying out any phase of developing the subject tract, or as defined in this section, certain successors in title.

*SFHP development* means a tract of land or any improvements thereon which are subject to a SFHP agreement.

*SFHP home* means a dwelling unit marketed and sold to satisfy SFHP requirements.

*SFHP manufactured home lot* means a lot which is marketed and either sold or rented for the purposes of the placement of a manufactured home and to satisfy SFHP requirements.

*SFHP rental unit* means a rental unit marketed and leased specifically to satisfy SFHP requirements.

*SFHP unit* means a dwelling unit required to be provided on site by a SFHP developer or a SFHP property owner to satisfy the SFHP requirements.

**Section 25.     Section 21-3.3 SFCC 1987 (being Ord. #1999-42, §8 as amended) is amended to read:**

**21-3.3 ~~[Inclusionary Zoning Ordinance]~~ Santa Fe Homes Program Applicability.** The ~~[Inclusionary Zoning Ordinance]~~ Santa Fe Homes Program as set forth in Section 14-8.11 SFCC 1987 shall apply to any application for residential developments located outside the city limits, which is requesting the extension of city refuse collection, submitted to the city after August 1, 1999, as may be limited by said ordinance and the city's jurisdiction. For the purpose of this subsection residential development shall be defined as set forth in Article 14-12 SFCC 1987.

**Section 26.     Section 22-3.1 SFCC 1987 (being Ord. #1997-3, §5 as amended) is amended to read:**

**22-3.1 Connection to the Public System; Requirements.**

A.     Connection to the public system is mandatory when the property being developed or

improved is accessible to the city sanitary sewer system. Prior to making such a connection, owners and developers of such property shall obtain information from the division concerning specifications, standards, procedures and other requirements contained in this chapter.

B. The [~~Inclusionary Zoning Ordinance~~] Santa Fe Homes Program as set forth in Section 14-8.11 SFCC 1987 shall apply to any application for residential developments located outside the city limits, which is requesting the extension of or connection to city sewer, submitted to the city after August 1, 1999, as may be limited by said ordinance and the city's jurisdiction. For the purpose of this section residential development shall be defined as set forth in Article 14-12 SFCC 1987.

**Section 27. Section 25-1.11 SFCC 1987 (being Ord. #1999-42, §10 as amended) is amended to read:**

**25-1.11 [~~Inclusionary Zoning Ordinance~~] Santa Fe Homes Program Applicability.** The [~~Inclusionary Zoning Ordinance~~] Santa Fe Homes Program as set forth in Section 14-8.11 SFCC 1987 shall apply to any application for residential developments located outside the city limits, which is requesting the extension of or connection to city water, submitted to the city after August 1, 1999, as may be limited by said ordinance and the city's jurisdiction. For the purpose of this section residential development shall be defined as set forth in Article 14-12 SFCC 1987.

**Section 28. [~~REPEAL.~~] Section 26-1 SFCC 1987 (being Ord. 1998-3 as amended) is repealed.**

**Editor's Note: Chapter 26 shall be renamed Santa Fe Homes Program.**

**Section 29. A new Section 26-1 SFCC 1987 is ordained to read:**

**26-1 [~~NEW MATERIAL.~~] SANTA FE HOMES PROGRAM.**

**Section 30. A new Section 26-1.1 SFCC 1987 is ordained to read:**

**26-1.1 [~~NEW MATERIAL.~~] Short Title.**

This section may be cited as the "Santa Fe Homes Program Ordinance."

**Section 31. A new Section 26-1.2 SFCC 1987 is ordained to read:**

**26-1.2 [NEW MATERIAL.] Authority.** This Santa Fe Homes Program (SFHP) Ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to enact a housing code (N.M. Stat. Ann. Section 3-17-6 A(8) (1978)), to enact ordinances pursuant to its police power (N.M. Stat. Ann. Section 3-17-1 B (1978)), to enact zoning ordinances in general (N.M. Stat. Ann. Section 3-21-1 A (1978)), to enact zoning ordinances regulating the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land (N.M. Stat. Ann. Section 3-21-1 B(2) (1978)), and pursuant to any and all such other authority as may be applicable including but not limited to the city's recognized authority to protect the general welfare of its citizens. This section is adopted pursuant to the city of Santa Fe's powers under its municipal charter which was adopted effective March 15, 1998 pursuant to the Municipal Charter Act Sections 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of the Constitution of New Mexico.

**Section 32. A new Section 26-1.3 SFCC 1987 is ordained to read:**

**26-1.3 [NEW MATERIAL.] Purpose.** The purpose of the Santa Fe Homes Program is to:

- A. Increase the supply of affordable housing within the Santa Fe area for residents and businesses.
- B. Encourage the construction of affordable housing in all areas of the city in accordance with the general plan
- C. Strengthen the unique heterogeneous character of the Santa Fe area by providing a full range of housing choices for all ages, incomes and family sizes.
- D. Ensure that residents and future generations can afford to reside within the Santa Fe area.
- E. Ensure that affordable housing opportunities are available for those who work and wish to live in the Santa Fe area.
- F. Encourage the maintenance of the long term affordability of housing units within the Santa Fe area.
- G. Provide affordable housing wherever city utilities are extended beyond the city limits.

H. Foster economic integration by encouraging the availability of a range of housing opportunities in new developments in the Santa Fe area.

I. To provide the benefit of home equity to homeowners of affordable housing similar to those in market rate housing for such purposes as college education and retirement needs and in turn encouraging pride in ownership and maintenance of the affordable housing unit by allowing that home equity.

**Section 33. A new Section 26-1.4 SFCC 1987 is ordained to read:**

**26-1.4 [NEW MATERIAL.] Findings.** The governing body finds and determines that:

A. Affordable housing furthers geographic and community balance through providing a range of housing opportunities throughout the city; and

B. New residential development has not provided sufficient housing opportunities for households with incomes below the area median income; and

C. The amount of land in the city available for new residential development is severely limited by geography and topography; and

D. Inclusionary housing programs represent an extension of cities' police powers to regulate land use, ensuring that the limited supply of developable land provides housing opportunities for all incomes; and

E. Santa Fe is facing a growing shortage of housing that is affordable to a wide range of our population affecting the ability of new graduates, senior citizens, families with children, and employees in industries and services that are vital to a healthy economy to remain living in the city; and,

F. The lack of affordable housing is detrimental to the health, safety and welfare of the city's residents; and,

G. Federal and state funds for the construction of new affordable housing are insufficient to fully address the problems of affordable housing within the city and the private housing market has not provided adequate affordable housing opportunities for persons and households with incomes below the

area median income; and,

H. The city has previously adopted the Housing Opportunity Program in an attempt to address the affordable housing needs. This program has achieved limited effectiveness in stemming the growing affordable housing crisis in the city; and

I. The governing body in partnership with the regional planning authority established an affordable housing task force that was charged with recommending appropriate affordable housing policy and programs for the region. The task force recommendations included the implementation of a broadly applicable program to increase the supply of affordable housing particularly for those households with incomes less than the area median income; and

J. Based on the findings of the task force the governing body finds that it is necessary to adopt a new inclusionary zoning ordinance to replace the Housing Opportunity Program in order to address the city's housing crisis; and

K. According to the "2004 Housing Needs Study" prepared for the Santa Fe county land use department by Prior and Associates, 28.5% of all new homes in central Santa Fe county will need to be made affordable to households with incomes below the median income if the area is going to simply maintain its existing homeownership rate and 66.2% of new rental units will need to be affordable to households earning below 80% of the median income to meet the projected demand; and

L. According to the "Recommendations for an Affordable Housing Strategy in Santa Fe" developed by the regional planning authority's affordable housing task force there are currently 7,511 renters living in the Santa Fe who are in need of homes that are affordable to households with incomes below the median income while very few homes are on the market that could help meet this need.

**Section 34. A new Section 26-1.5 SFCC 1987 is ordained to read:**

**26-1.5 [NEW MATERIAL.] Definitions.**

*Administrative procedures* means the procedures adopted by the governing body which set forth how the Santa Fe Homes Program shall be administered.



*Affordable home price* means the highest price at which an SFHP home may be sold pursuant to Subsection 26-1.16 of this ordinance. For purposes of this ordinance, the price of an SFHP home includes the base price plus any fees charged of the buyer by the seller or a related entity, minus any of the buyer's closing costs or financing costs paid by the seller, as indicated by the settlement statement for the sale. The cost of allowable option upgrades may be in addition to the affordable home prices, as permitted by Section 26-1.16(F).

*Affordable manufactured home lot price* means the highest price at which an SFHP manufactured home lot may be sold pursuant to Subsection 26-1.16 of this ordinance.

*Affordable rent* means the highest monthly rent that may be charged for a SFHP rental unit pursuant to subsection 26-1.24 of this ordinance

*Allowable option upgrades* means additions and/or modifications to the standard features of an SFHP home chosen solely at the option of the SFHP buyer to upgrade the standard features of the SFHP home.

*Area median income* means the median income for the Santa Fe metropolitan statistical area as adjusted for various household sizes and published and revised periodically by the United States Department of Housing and Urban Development.

*Applicant* means a property owner or agent of a property owner who submits a development request to the city which is subject to any SFHP requirements, or any successor in title that is subject to SFHP requirements.

*City* means the city of Santa Fe or its agent.

*Dwelling unit* means one (1) room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and bathroom facilities.

*Extreme hardship* means a condition occurring as a direct consequence of the SFHP Ordinance which: (a) deprives a property owner of all economically viable use of the subject property taken as a whole; or (b)

would require the property owner to lose money on the development taken as a whole and the property owner can demonstrate to the governing body's satisfaction that said loss would be an unavoidable consequence of the SFHP requirement for construction of SFHP units; or (c) the property owner can demonstrate to the council's satisfaction that complying with the requirements of this Chapter would constitute taking property in violation of the Constitution of the United States or New Mexico.

*Income Range* means the range of annual incomes used in the determination of eligibility of an SFHP home buyer or an SFHP tenant. The income ranges are:

Income range 1: 50% or less of area median income

Income range 2: more than 50% but not more than 65% of area median income

Income range 3: more than 65% but not more than 80% of area median income

Income range 4: more than 80% but not more than 100% of area median income

*Manufactured home lot* means a lot which is marketed and either sold or rented for the purposes of the placement of a manufactured home.

*Maximum option upgrade allowance* means the maximum amount paid by the SFHP buyer for allowable option upgrades pursuant to Section 26-1.16.

*Median income* means the Area Median Income as defined.

*Office of affordable housing*, means the department created by Subsection 26-1.6 to administer the Santa Fe Homes Program and other affordable housing programs.

*Planning and land use department* means the planning and land use department of the city, its agent or successor.

*SFHP* means Santa Fe Homes Program.

*SFHP agreement* means an agreement between a property owner of record and the city whereby the city confers benefits in the form of development incentives to the property owner in exchange for compliance with SFHP with regard to providing required SFHP units or alternate means of compliance.

*SFHP developer* means an owner of a property subject to any SFHP requirements, who is carrying out

any phase of developing the subject tract, or as defined in this section, certain successors in title.

*SFHP development* means a tract of land or any improvements thereon which are subject to a SFHP agreement.

*SFHP home* means a dwelling unit marketed and sold to satisfy SFHP requirements.

*SFHP home buyer* means a purchaser of a SFHP home or the entire household occupying a SFHP home or the purchaser or entire household occupying a SFHP manufactured home lot.

*SFHP manufactured home lot* means a lot which is marketed and either sold or rented for the purposes of the placement of a manufactured home and to satisfy SFHP requirements.

*SFHP property owner* means the owner of any property which is subject to SFHP requirements, or as defined in this section, certain successors in title.

*SFHP rental unit* means a rental unit marketed and leased specifically to satisfy SFHP requirements.

*SFHP tenant* means a person who is a lessee of a SFHP rental unit, or a manufactured home rental lot, or the entire household occupying a SFHP rental unit or SFHP manufactured home lot.

*SFHP unit* means a dwelling unit required to be provided on site by a SFHP developer or a SFHP property owner to satisfy the SFHP requirements.

*Unit* means a dwelling unit.

**Section 35. A new Section 26-1.6 SFCC 1987 is ordained to read:**

**26-1.6 [NEW MATERIAL.] Creation of Office of Affordable Housing.**

A. The office of affordable housing shall be established to administer the Santa Fe Homes Program in accordance with the provisions of this ordinance, and to administer the city's other affordable housing programs. The office of affordable housing shall be an independent department responsible to the city manager.

B. In administering this ordinance, the office of affordable housing shall work with the planning and land use department to eliminate conflict and duplication in the permitting and development approval process.

C. The office of affordable housing shall administer any agreements previously executed by the City and others.

**Section 36. A new Section 26-1.7 SFCC 1987 is ordained to read:**

**26-1.7 [NEW MATERIAL.] Administrative Procedures.**

A. The SFHP shall be administered by the city as set forth in the administrative procedures adopted by resolution of the governing body. The administrative procedures shall set forth responsibilities, procedures and standards for administrative actions necessary to implement the SFHP and annexation agreements with affordable housing requirements, which include, without limitation, the following:

(1) Submitting and reviewing applicable residential development requests and determining conditions of approval related to the provision of SFHP units or alternate means of compliance.

(2) Reviewing and certifying SFHP proposals with property owners to ensure compliance with the SFHP and the administrative procedures.

(3) Monitoring the performance of property owners subject to such agreements, and any successors in title that are still subject to such agreements or other requirements of the SFHP and the administrative procedures; and taking appropriate action in the event of noncompliance.

(4) Collecting and distributing any payments resulting from SFHP controls on resale or alternative means of compliance with SFHP agreements or annexation agreements that have affordable housing requirements.

B. The office of affordable housing or its agents shall be responsible for the administration of the SFHP as set forth in the applicable city ordinances and the administrative procedures.

C. The planning and land use department staff shall:

(1) Administer and enforce all planning and land use ordinances that apply to development requests that are subject to this section.

(2) Require, as part of the development review process, the applicant to prepare and submit a SFHP proposal to the office of affordable housing to assure compliance with the SFHP Ordinance

(3) Administer provisions for development incentives in the development review process as set forth in this section.

(4) Record the SFHP agreements with the respective subdivision plat or development plan at the county clerk's office.

(5) Where applicable, invoke sanctions for noncompliance with SFHP agreements at the request of the city manager.

D. All changes to the administrative procedures other than changes to area median income and related SFHP numerical data shall be reviewed and approved by the governing body.

**Section 37. A new Section 26-1.8 SFCC 1987 is ordained to read:**

**26-1.8 [NEW MATERIAL.] Applicability.**

A. The SFHP shall apply to the following types of applications for development which propose dwelling units or buildings or portions of buildings which may be used for both nonresidential and residential purposes and manufactured home lots. SFHP applies to the residential portion of the development.

(1) Annexation, initiated by parties other than the city, shall be subject to the SFHP requirements subject to the provisions of Paragraph 26-1.8 (C);

(2) Rezoning, except those that only result in a family transfer or lot split as used in this chapter;

(3) Subdivision plat, except a family transfer or lot split as used in this chapter;

(4) Increase in density for approved master plan or development plan;

(5) Development plan except those which require only staff approval;

(6) Projects located outside the city limits, requesting the extension of or connection

to city utilities submitted to the city after August 23, 1999 shall be subject to this section as may be limited by this Ordinance and the city's jurisdiction;

(7) Building permits for the remodel of more than two dwelling units for the purpose of converting rental units to ownership units.

B. The SFHP shall not apply to the following:

(1) Any development or portion thereof which is subject to any formal, written and binding agreement entered into prior to August 15, 2005, with the City or Santa Fe County which if within said agreement the signatories agreed to provide affordable housing or payment in lieu thereof; or

(2) Dwelling units or manufactured home lots for a school, hospital or similar institution to be used exclusively by its employees or enrolled students and their families. If the dwelling units are no longer used exclusively by its employees or enrolled students, the SFHP shall apply at the time the units are converted.

C. Petitioners for annexations and the office of affordable housing shall negotiate all terms for providing affordable housing on site including the distribution of development types and the number of SFHP units required or alternate means of compliance. The number of SFHP units required or alternate means of compliance may be in excess of that required by SFHP. These terms shall be included in the annexation agreement. To the extent practicable, all other SFHP requirements shall apply to annexations. In no case shall the agreement provide for less affordable housing or a lesser in-lieu contribution than required by SFHP. As the property is developed, a separate SFHP agreement in compliance with the annexation agreement shall be recorded with each subdivision plat or development plan.

D. All provisions of the prior ordinance, titled Housing Opportunity Program (HOP) remain in full force and effect with respect to any and all agreements executed by the city and others which were required by HOP or incorporated HOP provisions by reference. Accordingly, the office of affordable housing will continue to use and annually update the administrative procedures for the HOP ordinance

until such time as all obligations under such agreements have been satisfied.

**Section 38. A new Section 26-1.9 SFCC 1987 is ordained to read:**

**26-1.9 [NEW MATERIAL.] Presubmission Conference.** Prior to the submittal of a development request to the planning and land use department or to the public utilities department, if the applicant is submitting a request for the extension of or connection to city utilities for a development located outside the city limits, to which the SFHP applies as set forth in subsection 26-1.8 a presubmission conference with the office of affordable housing is required with regard to the development proposal and SFHP requirements.

**Section 39. A new Section 26-1.10 SFCC 1987 is ordained to read:**

**26-1.10 [NEW MATERIAL.] Requirement, Scope and Content for SFHP Proposals.** SFHP proposals shall be required by the city for all developments as set forth in subsection 26-1.8. SFHP proposals shall include the applicant's plan for providing SFHP units or alternate means of compliance as required by the SFHP Ordinance, and comply with all provisions set forth in the administrative procedures, including but not limited to a timetable for delivering SFHP units or completing alternate means of compliance.

**Section 40. A new Section 26-1.11 SFCC 1987 is ordained to read:**

**26-1.11 [NEW MATERIAL.] Submission and Review of SFHP Proposals.**

A. A SFHP proposal shall be submitted with any development request to which SFHP applies. The office of affordable housing shall provide technical assistance in completing SFHP proposals. Each SFHP proposal shall be reviewed by the office of affordable housing. After review, the office of affordable housing shall either approve the SFHP proposal or disapprove the SFHP proposal and refer it back to the applicant with written comments regarding the proposal's deficiencies.

B. A revised SFHP proposal shall be submitted and reviewed by the office of affordable housing if changes in the SFHP proposal are necessary because of changes in the development request as it proceeds through the development review process.

**Section 41. A new Section 26-1.12 SFCC 1987 is ordained to read:**

**26-1.12 [NEW MATERIAL.] Appeals.**

A. Any applicant aggrieved of a decision of city staff regarding the SFHP provisions shall appeal to the governing body.

B. The applicant may proceed with other submissions related to the development request while any appeal is being considered.

C. Appeals shall be filed within thirty (30) days of the action appealed.

**Section 42. A new Section 26-1.13 SFCC 1987 is ordained to read:**

**26-1.13 [NEW MATERIAL.] Processing and Approval of Development Requests Subject to SFHP.** The planning and land use department and the planning commission or the public utilities department and governing body, if the applicant is submitting a request for the extension of or connection to city utilities for a development located outside the city limits, shall accept, review and decide on plan submissions on development requests subject to SFHP requirements as follows:

A. No submission shall be heard by the review body unless a SFHP proposal has been approved by the office of affordable housing or the SFHP proposal has been appealed in accordance with SFHP requirements.

B. Development incentives shall be included in SFHP developments as set forth in Subsection 26-1.34.

C. If a SFHP proposal is subject to appeal, the outcome of the appeal process may determine whether the development incentives set forth in Subsection 14-8.11(G) apply. In this case, the applicant may choose one of the following options with regard to continued processing of the development proposals:

(1) Processing may be suspended until the appeal is heard and decided; or

(2) Processing may be continued. In this case, the applicant may determine whether

to incorporate in the development proposal any development incentives which are subject to the



outcome of the appeal.

**Section 43. A new Section 26-1.14 SFCC 1987 is ordained to read:**

**26-1.14 [NEW MATERIAL.] Execution of SFHP Agreements.** The governing body delegates authority to enter into SFHP agreements to the city manager. Following the final approval of the development proposal the SFHP agreement shall be executed by the city manager and the applicant. The agreement shall be referred to and recorded as set forth in Subsection 26-1.10.

**Section 44. A new Section 26-1.15 SFCC 1987 is ordained to read:**

**26-1.15 [NEW MATERIAL.] Required Number of For Sale SFHP Homes in a Development.**

A. Thirty percent (30%) of the total number of dwelling units or manufactured home lots offered for sale in an SFHP development shall be SFHP Homes, as follows:

(1) Ten percent (10%) of the total dwelling units or manufactured home lots shall be sold at or below the affordable home price or affordable manufactured home lot price, as applicable, for income range 2.

(2) Ten percent (10%) of the total dwelling units or manufactured home lots shall be sold at or below the affordable home price or affordable manufactured home lot price, as applicable, for income range 3, and

(3) Ten percent (10%) of the total dwelling units or manufactured home lots shall be sold at or below the affordable home price or affordable manufactured home lot price, as applicable, for income range 4.

B. If an applicant exceeds the percentage in income range 2 or income range 3 as set forth above, the requirement in any higher income range may be reduced by the same percentage.

C. The whole number resulting from this calculation shall be the number of SFHP homes required to be constructed or SFHP manufactured home lots to be created. If the calculation described results in a fraction of a unit, this obligation shall be satisfied as set forth in the administrative procedures.

Nothing herein shall prohibit a developer from building a greater number of SFHP homes or creating a greater number of SFHP manufactured home lots than specified herein. Such additional units shall meet all the requirements as a SFHP home or manufactured home lot. The SFHP developer shall receive the fee waivers described in Section 14.8-11(G)(2) for such additional units so long as those units meet all SFHP requirements. D. In any development with a mix of rental and ownership units or manufactured home lots, the number of SFHP rental units or rental manufactured home lots shall be in the same proportion as the number of non-SFHP rental units or rental manufactured home lots and likewise with ownership units or ownership manufactured home lots.

E. In any development with a mix of detached and attached ownership units, the mix of SFHP units shall be in the same proportion as the mix of non-SFHP units.

F. In the event that two or fewer SFHP Homes or SFHP manufactured home lots are required, the SFHP Homes or manufactured home lots shall be affordable to income range 3 or income range 2.

**Section 45. A new Section 26-1.16 SFCC 1987 is ordained to read:**

**26-1.16 [NEW MATERIAL.] Determination of Affordable Home Price**

A. To ensure the SFHP homes are affordable, the affordable home prices below are calculated to ensure that the sum of principal and interest payments, taxes, property insurance and mortgage insurance does not exceed 33% of the monthly income of the assumed household size in each applicable income range.

B Except as provided in Section 26-1.6(E) below, at the time of enactment of this ordinance, the affordable home price for each income range, shall be:

Income Range	Affordable Home Price Studio	Affordable Home Price 1 Bedroom	Affordable Home Price 2 Bedroom	Affordable Home Price 3 Bedroom	Affordable Home Price 4 Bedroom

Income Range 2	\$74,500	\$85,000	\$97,000	\$109,000	\$122,000
Income Range 3	\$100,500	\$111,000	\$126,000	\$142,000	\$158,000
Income Range 4	\$125,500	\$136,000	\$155,000	\$175,000	\$194,000

C. Except as provided in Section 26-1.6(E) below, the affordable manufactured home lot price shall be 25% of the affordable home price for a 3 bedroom home for each applicable income range, as follows:

Income Range	Affordable Manufactured Home Lot Price
Income Range 2	\$27,250
Income Range 3	\$35,500
Income Range 4	\$43,750

D. Beginning in 2006 and every year thereafter, the office of affordable housing shall review and adjust the affordable home price and affordable manufactured home lot for each applicable income range and home size based on the changes in area median income from the previous 12 months. However, every three years thereafter at a minimum, the governing body shall review the methodology for calculating annual increases and make appropriate adjustments if necessary. The office of affordable housing shall report to the governing body within 30 days of adjusting the affordable home price and affordable manufactured home lot price.

E. The affordable home price and affordable manufactured home lot price shall be reduced pursuant to administrative procedures in order to limit the impact on SFHP home buyers of fees assessed by condominium, common area, or homeowner associations. The affordable home price or affordable manufactured home lot price shall be reduced so that the buyer's mortgage or manufactured home loan

principal amount and, accordingly, the buyer's monthly mortgage payments, are reduced by an amount equal to the assessed fee.

F. Pursuant to administrative procedures, the affordable home price may be increased at the request of the SFHP home buyer by the price of allowable option upgrades, not to exceed the maximum option upgrade allowance.

G. At the time of the enactment of this Ordinance, the maximum option upgrade allowance shall be no greater than \$5,000. Beginning in 2006 and every year thereafter, the office of affordable housing shall review and adjust the maximum option upgrade allowance based on changes in the area median income for the previous 12 months. Permissible items to be included in the Maximum Option Upgrade Allowance shall be determined pursuant to Administrative Procedures.

**Section 46. A new Section 26-1.17 SFCC 1987 is ordained to read:**

**26-1.17 [NEW MATERIAL.] Design, Unit Types, Siting Requirements for SFHP Homes.**

A. The SFHP homes shall be constructed according to the minimum requirements for bathrooms and area of habitable residential space described below:

Unit Type	Minimum Number of Bathrooms	Minimum Area
Studio	1	750 square feet
1 Bedroom	1	850 square feet
2 Bedrooms	1	1,000 square feet
3 Bedrooms	2	1,150 square feet
4 Bedrooms	2	1,250 square feet

Habitable space shall be defined and calculated in accordance with the city's building code, except that the minimum area of SFHP homes may be greater than minimum building code requirements.

B. The SFHP homes shall meet the following distribution:

(1) The distribution of SFHP unit sizes shall be as follows:

Unit Size	Required percentage of SFHP Homes
Studio, 1 Bedroom and 2 Bedroom	25%
3 Bedroom	50%
4 Bedroom	25%

(2) The SFHP developer may request approval from the office of affordable housing to provide a mix of unit sizes that varies from the above. Factors that may be considered as a basis for approving a different unit size mix include, but are not limited to:

- (a) A different mix would better match the mix of non-SFHP homes within the development
- (b) A different mix would better match the consumer demand for SFHP homes

C. The minimum sizes specified in this subsection shall not apply to units converted from existing rental units to ownership units. In such developments, the mix of size and type of SFHP Homes offered for sale shall be in proportion to the mix of non-SFHP homes offered for sale.

D. SFHP homes at different price levels and of different home sizes shall be dispersed evenly among the non-SFHP homes and be evidenced by designation of home lots at time of plat recording for each phase of development.

E. The SFHP homes shall be similar in architectural and landscaping appearance to the non-SFHP homes.

**Section 47. A new Section 26-1.18 SFCC 1987 is ordained to read:**

**26-1.18 [NEW MATERIAL.] Affordability Controls on SFHP Homes; Rental Prohibition.**

A. A SFHP developer selling a SFHP home or manufactured home lot shall cause to be recorded, in the county clerk's office, simultaneous with the recording of the deed of sale, a form of deed

restriction, restrictive covenant or other legal instrument that fulfills the requirements set forth in the administrative procedures with regard to controls placed on the occupancy and subsequent resales of SFHP homes and SFHP manufactured home lots. In order to maintain affordability, the SFHP Developer shall impose resale controls consisting of mortgage liens, which include shared appreciation described below, and right of first refusal requirements as set forth in the administrative procedures. The effect of the recordation of said document(s) shall be to create, in accordance with state law, an obligation that runs with the property. The city shall approve the form of such documents prior to recordation. Initial affordability shall be achieved by including in the SFHP agreement terms of an escrow instruction requiring certification of SFHP compliance by the escrow agent.

B. The amount of the above-described lien will be the difference between the SFHP price and the initial market value of the SFHP home or SFHP manufactured home lot. In order to provide additional equity to the SFHP buyer at the time of purchase, the initial market value shall be determined as 95% of the appraised value of the SFHP home or SFHP manufactured home lot.

C. A SFHP lien will provide for shared appreciation by requiring the buyer to repay the original amount of the lien plus a share of appreciation, if any, upon resale of the home or manufactured home lot or violation of the occupancy requirements as described herein and by the administrative procedures. The city's share of appreciation, if any, will be in proportion to the ratio of the SFHP lien to the initial market value at the time of the SFHP buyer's initial purchase. The administrative procedures shall provide for a deduction from gross appreciation equal to the value of any capital improvements and repairs made during time of ownership. For purpose of example, following are steps used to determine the city's share of appreciation:

- (1) Determine SFHP affordable home price (example: 3 bedroom home in income range 3): \$142,000
- (2) Determine appraised value of SFHP home: \$220,000
- (3) Determine initial market value of SFHP home:  $\$220,000 \times 95\% = \$209,000$

(4) Determine amount of lien:  $\$209,000 - \$142,000 = \$67,000$

(5) Determine city's share of appreciation (proportion of lien to initial market value):

$$\$67,000/\$209,000 = 32\%$$

D. Upon resale of an SFHP home or manufactured home lot, the affordability lien may be assumed by another SFHP buyer as approved by the city or its agent, or the seller must repay the SFHP lien to the city or its agent.

E. The proceeds of repayment of SFHP liens resulting from SFHP agreements or annexations shall be credited to a housing trust fund approved by the governing body and managed by the office of affordable housing, which may include funds from other sources. Uses of housing trust fund monies may include down payment assistance, as well as subsidies for low-income rental, emergency and special needs housing. Funding from the trust fund must be awarded through a competitive process.

F. A SFHP home buyer or SFHP manufactured home lot buyer shall not rent the SFHP unit or manufactured home lot to a second party, except as approved in writing by the office of affordable housing for instances in which the owner is under duress by reason of unemployment, family medical emergencies, or inability to sell the home for an amount equal to or greater than the original sale price, or other unique circumstances of family hardship.

**Section 48. A new Section 26-1.19 SFCC 1987 is ordained to read:**

**26-1.19 [NEW MATERIAL.] Enforcement of SFHP Agreement.**

A. When a sale is found to be not in compliance with the SFHP ordinance or SFHP agreement, or the information is insufficient to determine compliance, the SFHP developer shall be notified in writing and have the opportunity to rectify the noncompliance or supply the information lacking with respect to that SFHP home. However, in the event of such noncompliance, the city shall not certify any sale of a SFHP home and reserves the right not to certify the sale of any further non-SFHP units or manufactured home lots, while recognizing that this shall create an encumbrance and title flaw if any sale is made.

B. The enforcement provisions set forth in Section 14-11.5(D) SFCC 1987 shall apply to all instances of noncompliance, including noncompliance as described in Section 26-1.19(A).

**Section 49. Section 26-1.20 SFCC 1987 is ordained to read:**

**26-1.20 [NEW MATERIAL.] Marketing To and Certifying SFHP Buyers**

A. SFHP developers shall market SFHP Homes and SFHP manufactured home lots in accordance with the requirements set forth in the administrative procedures. Any marketing materials shall clearly state the policies of the SFHP program with regard to pricing of SFHP homes and manufactured home lots and buyer eligibility.

B. In marketing SFHP homes and SFHP manufactured home lots the city or seller shall give preference to individuals who are citizens of Santa Fe county and or are presently employed or under contract with an employer within Santa Fe county as may be limited by federal programs.

C. The city or its agent shall maintain and make available lists of prospective SFHP buyers who have passed preliminary prequalifications for financing. For SFHP developments for which the city or its agent expects immediate effective demand to outstrip the supply, the city or its agent may establish and maintain a fair and competitive process for allocating rights to purchase the homes or manufactured home lots. In developments where the city or its agent has established such a process, the developer shall be required to follow the process when selecting SFHP buyers. For developments other than those described above, the developer shall establish and maintain an equitable process of marketing homes and manufactured home lots, including waiting lists where demand exceeds supply.

D. Each development with SFHP homes or SFHP manufactured home lots for sale, including annexations subject to SFHP, shall engage a qualified organization or organizations to provide marketing services, income certifications, homebuyer training, maintenance of waiting lists, and home purchase and finance counseling to prospective SFHP buyers. The office of affordable housing shall establish an equitable process for selecting the organization or organizations providing these services.

The organization and the SFHP developer shall enter into a written agreement that describes the scope of



services and fee structure. Notwithstanding those requirements, and in order to assure access to SFHP homes and manufactured home lots by all potentially qualified SFHP buyers, any other service provider operating a homebuyer training, counseling and certification program approved by the office of affordable housing may refer its clients to the selected organization for possible purchases of the SFHP homes or manufactured home lots.

E. Prior to executing a purchase contract for any SFHP Home or SFHP manufactured home lot, the prospective SFHP buyer shall be certified as meeting SFHP requirements by the city or its agent. The certification shall be as set forth in the administrative procedures. SFHP Developers and SFHP buyers may execute only purchase agreements that are approved as to form by the city and include language provided by the city which shall require that an appropriate disclosure form be provided to and explained to the SFHP buyer prior to execution of the contract. The disclosure form shall explain any deed restrictions, restrictive covenants and/or liens that are placed on the SFHP home or lot to ensure long-term affordability.

**Section 50. A new Section 26-1.21 SFCC 1987 is ordained to read:**

**26-1.21 [NEW MATERIAL.] Eligibility of SFHP Buyers**

A. The household income of a SFHP Homebuyer shall not exceed the defined Income Ranges as set forth in Subsection 26-1.5.

B. The household income of a SFHP manufactured home lot buyer shall not exceed the defined income ranges as set forth in Subsection 26-1.5 for a 3 person household, regardless of the household size of the SFHP buyer.

C. SFHP homebuyers and SFHP manufactured home lot buyers shall also meet additional eligibility criteria established in the administrative procedures.

D. A SFHP Home may not be sold to a household which is smaller than the following household sizes unless the office of affordable housing approves in writing a smaller minimum household size:

Unit Size	Minimum Household Size
Efficiency/studio	1 person household
1 Bedroom	1 person household
2 Bedrooms	1 person household
3 Bedrooms	2 person household
4 bedrooms	3 person household

**Section 51. A new Section 26-1.22 SFCC 1987 is ordained to read:**

**26-1.22 [NEW MATERIAL.] Requirements for SFHP Rental Units.**

A. The marketing, leasing and occupancy of a SFHP rental unit and SFHP manufactured home lot that is rented shall conform to the criteria set forth in the administrative procedures. Rental rates shall be in accordance with the rates set forth in subsection 26-1.24. SFHP rental units shall be built to comply with the minimum size, unit type(s) and other structural requirements set forth in subsection 26-1.25. The location of the SFHP rental units shall be approved by the office of affordable housing. The units or manufactured home lots shall be dispersed throughout the development; however, if multiple SFHP units or manufactured home lots are required, the units or manufactured home lots may be grouped provided that the groups are dispersed throughout the development. The units or manufactured home lots shall have compatible exterior architectural and landscaping appearance with other units in the development.

**Section 52. A new Section 26-1.23 SFCC 1987 is ordained to read:**

**26-1.23 [NEW MATERIAL.] Required Number of SFHP Rental Units in a Development.**

A. Fifteen percent of the total number of dwelling units and SFHP manufactured home lots offered for rent in an SFHP development shall be SFHP rental units or SFHP rental manufactured lots, as follows:

- (1) Five percent (5%) of the total dwelling units or manufactured home lots shall be rented at or below the affordable rent for income range 1.

(2) Five percent (5%) of the total dwelling units or manufactured home lots shall be rented at or below the affordable rent for income range 2.

(3) Five percent (5%) of the total dwelling units or manufactured home lots shall be rented at or below the affordable rent for income range 3.

B. If an applicant exceeds the percentage in income range 1 or income range 2 as set forth above, the requirement in any higher income range may be reduced by the same percentage.

C. The whole number resulting from this calculation shall be the number of SFHP rental units to be constructed or rental manufactured home lots to be created. If the calculation described results in a fraction of a unit or manufactured home lot, this obligation shall be satisfied as set forth in the administrative procedures. Nothing herein shall prohibit a developer from building a greater number of SFHP rental units or creating a greater number of SFHP rental manufactured home lots than required herein. Such additional units shall meet all the requirements as a SFHP rental unit or manufactured home lot. The SFHP developer shall receive the fee waiver described in Section 14.8-11 (G)(2) for such additional units so long as the units meet all SFHP requirements.

D. In any development with a mix of rental and ownership units or manufactured home lots, the number of SFHP rental units or manufactured home lots shall be in the same proportion as the number of non-SFHP rental units or manufactured home lots and likewise for ownership units or manufactured home lots.

E. In the event that only two or fewer SFHP rental units or SFHP rental manufactured home lots are required, the SFHP rental unit(s) or SFHP rental manufactured home lot(s) shall be affordable to income range 2 or income range 1.

F. Units or manufactured home lots available for SFHP rentals shall be described in the SFHP proposal in sufficient detail so that such units or manufactured home lots can be identified after construction or creation and occupancy. SFHP rental units or manufactured home lots shall have approximately the same ratios of unit or manufactured home lot sizes as the number of non-SFHP rental

units. SFHP tenants must meet eligibility requirements at the time of the initial lease. If a SFHP tenant vacates an SFHP rental unit or manufactured home lot, landlord shall offer that unit or manufactured home lot, or another equivalent unit or manufactured home lot, to an eligible tenant within the same income range.

**Section 53. A new Section 26-1.24 SFCC 1987 is ordained to read:**

**26-1.24 [NEW MATERIAL.] Determination of Affordable Rent**

A. To ensure that rental rates do not exceed 30% of the monthly income for households in each applicable income range, the affordable rent for SFHP rental dwelling units shall equal the rental rate, as set forth below.

B. Affordable rental rate shall be determined for each income range as follows:

Income Range	Affordable Rent Efficiency/Studio or 1 Bedroom	Affordable Rent 2 Bedrooms	Affordable Rent 3 Bedrooms	Affordable Rent 4 Bedrooms
Income Range 1	\$346	\$396	\$445	\$495
Income Range 2	\$577	\$660	\$742	\$825
Income Range 3	\$750	\$858	\$965	\$1,073

C. The affordable rent for manufactured home lots shall not exceed 30% of the affordable rent for a 3 bedroom dwelling unit for each applicable income range, as follows:

Income Range	Affordable Manufactured Home Lot Rent
Income Range 1	\$134
Income Range 2	\$223
Income Range 3	\$290

D. Beginning in 2006 and every year thereafter, affordable rent and affordable manufactured home lot rent for each applicable income range shall be adjusted by the percentage change in area median

income from the previous 12 months and the office of affordable housing shall issue an updated schedule of affordable rents and affordable manufactured home lot rent for each applicable income range. The office of affordable housing shall report to the governing body within 30 days of adjusting affordable rents and affordable manufactured home lot rent.

**Section 54. A new Section 26-1.25 SFCC 1987 is ordained to read:**

**26-1.25 [NEW MATERIAL.] Design, Unit Types for SFHP Rental Dwelling Units.**

The SFHP rental dwelling units shall be constructed according to the minimum requirements for bathrooms and area of habitable residential space described below:

Unit Type	Minimum Bathrooms	Minimum Area
Efficiency/Studio	1	500 square feet
1 Bedroom	1	650 square feet
2 Bedrooms	1	800 square feet
3 Bedrooms	2	950 square feet
4 Bedrooms	2	1100 square feet

Habitable space shall be defined and calculated in accordance with the city's building code, except that the minimum area of SFHP rental units may be greater than minimum building code requirements.

**Section 55. A new Section 26-1.26 SFCC 1987 is ordained to read:**

**26-1.26 [NEW MATERIAL.] Marketing To and Certifying SFHP Tenants.**

A. Owners of SFHP developments for rental housing or rental manufactured home lots shall market the SFHP rental units in accordance with the administrative procedures. Marketing materials shall clearly state the policies of the SFHP program with regard to pricing of SFHP rental units and tenant eligibility. For developments with SFHP rental units for which the city or its agent expects immediate effective demand to outstrip the supply, the city or its agents shall establish and maintain a fair and competitive process for allocating rights to lease the SFHP rental units. In developments where the city or its agent has established such a process, the developer shall be required to follow the process when

selecting SFHP tenants. For developments besides those described above, the developer shall establish and maintain an equitable process of marketing SFHP rental units, including waiting lists where demand exceeds supply.

B. In renting SFHP rental units the landlord shall give preference to individuals who are residents of Santa Fe county or are presently employed or under contract with an employer within Santa Fe county as may be limited by federal programs.

C. Prior to executing a lease for any SFHP rental unit, the prospective SFHP tenant shall be certified as meeting the SFHP requirements by the city or its agent. The certification shall be as set forth in the administrative procedures. Nothing, however, in this chapter or administrative procedures shall be construed so as to penalize qualifying renters for changes in family size due to changes in number of dependents.

D. Any owner or agent required to provide SFHP rental units shall not discriminate against a tenant for proposing to use federal or other rent subsidies, nor can such subsidies be used to achieve a required SFHP contract rent.

**Section 56. A new Section 26-1.27 SFCC 1987 is ordained to read:**

**26-1.27 [NEW MATERIAL.] Eligibility of SFHP Tenants.**

A. The household income of a SFHP tenant renting a SFHP rental dwelling unit shall not exceed the defined income ranges as set forth in Subsection 26-1.5.

B. The household income of a SFHP tenant renting a SFHP rental manufactured home lot shall not exceed the defined income ranges as set forth in Subsection 26-1.5 for a 3-person household regardless of the household size of the SFHP tenant.

C. SFHP tenants and SFHP manufactured home lot tenants shall also meet additional eligibility criteria established in the administrative procedures.

D. A SFHP rental unit may not be rented to a household which is smaller than the following household sizes unless the office of affordable housing approves in writing a smaller minimum household

size:

Unit Size	Minimum Household Size
Efficiency/Studio	1 person household
1 Bedroom	1 person household
2 Bedrooms	1 person household
3 Bedrooms	2 person household
4 bedrooms	3 person household

**Section 57. A new Section 26-1.28 SFCC 1987 is ordained to read:**

**26-1.28 [NEW MATERIAL.] Allowed and Disallowed Uses of Subsidies.** Contract rental rates charged for SFHP units shall not be achieved by use of rent subsidies from any source other than the property owner. However, developers of SFHP rental units may use any type of capital development subsidy to achieve the required rents.

**Section 58. A new Section 26-1.29 SFCC 1987 is ordained to read:**

**26-1.29 [NEW MATERIAL.] Term of Compliance.** Rental housing developments and manufactured home lot developments subject to SFHP (or portions thereof completed and occupied at different times) shall maintain required occupancy and rental rates in SFHP units for a period of twenty (20) years after the date of issuance of a certificate of occupancy for the entire development or portions thereof. This requirement shall be made applicable to successors in title, if any, by means of a deed restriction.

**Section 59. A new Section 26-1.30 SFCC 1987 is ordained to read:**

**26-1.30 [NEW MATERIAL.] Monitoring by the City of SFHP Leases and Enforcement of Agreements.** SFHP agreements involving SFHP rental units shall provide for annual monitoring and certification of leased SFHP rental units by the city or its agents, as set forth in the administrative procedures. The city shall have the right to inspect and photocopy all accounting and occupancy records with regard to any SFHP rental unit. It shall further have the right to contact and interview any SFHP

tenant with regard to compliance issues. Owners of SFHP rental units shall keep adequate records of all payments of rent and data concerning tenants, in accordance with standard practices of the rental housing industry. If disputes arise over what constitutes adequate record keeping, the city under its SFHP agreement shall have the right to require owners to adopt financial and information management practices that are recommended by a certified public accountant and/or property management manuals published by the institute of real estate management. The city shall have access to all relevant financial and tenant information records during normal business hours, upon providing verbal or written notice at least two (2) business days prior to a proposed monitoring visit. Upon completion of this annual monitoring activity, the city shall certify that the property owner is in compliance with the SFHP agreement, or shall issue findings of noncompliance. Upon findings of noncompliance with the SFHP agreement, the city shall issue orders for bringing the SFHP development into compliance. Such orders shall give the property owner twelve (12) months to reach compliance, but may also require actions to compensate for noncompliance. If a property owner willfully and continually refuses to comply with SFHP agreements or related orders from the city, the city may invoke sanctions set forth in Subsection 26-1.19.

**Section 60. A new Section 26-1.31 SFCC 1987 is ordained to read:**

**26-1.31 [NEW MATERIAL.] Simplified Compliance and Low Income Housing Tax Credit Projects.** Notwithstanding any other terms of SFHP or a SFHP agreement, if rental units in a SFHP development have been awarded tax credits under the federal low-income housing tax credit program, such units shall be deemed to comply with all tenant certification and rental requirements of the SFHP program, so long as the project is in good standing with regard to the monitoring standards of that program. For such projects in good standing, the only monitoring required by the city shall be delivery to the office of affordable housing, within ten (10) days of receipt, all copies of the monitoring agency's reports and correspondence with regard to compliance monitoring.

**Section 61. A new Section 26-1.32 SFCC 1987 is ordained to read:**

**26-1.32 [NEW MATERIAL.] Timing of Compliance; For Sale and For Rent Housing.**



A. In a SFHP development, completed SFHP homes or SFHP manufactured home lots shall be made available for sale in proportion to the offering for sale of unimproved lots or non-SFHP units or non-SFHP manufactured home lots as set forth in the administrative procedures. In a SFHP development, the required number of SFHP rental units shall be leased as each building or phase of the project is offered for rent as set forth in the administrative procedures. A phase shall be defined as a group of units or manufactured home lots which is completed and ready for occupancy within a period of one year. A developer may sell or lease SFHP units or manufactured home lots earlier than required herein.

B. Fee in lieu of contributions approved as an alternate means of compliance shall be due and deliverable to an entity approved by the city after approval of the development request and before the recordation of the SFHP agreement. An applicant may, at the applicant's option, propose an alternative to this requirement in which staged payments are made upon the predicted occurrence of certain events as set forth in the administrative procedures. The value of each contribution shall be determined as set forth in the administrative procedures.

**Section 62. A new Section 26-1.33 SFCC 1987 is ordained to read:**

**26-1.33 [NEW MATERIAL.] Alternate Means of Compliance.**

A. One of the goals and purposes of the SFHP program is to foster economic integration by requiring that developers provide required SFHP units and manufactured home lots on the property proposed for development. However, it is recognized that at times this approach may not be feasible due to extreme hardship as defined. In this event, the applicant may seek permission from the governing body to comply with the SFHP through any one or combination of the following alternative means acceptable to the city in its sole discretion: off-site construction, cash payment in lieu of constructing or creating the required SFHP units or manufactured home lots or dedication of land suitable for construction or creation of inclusionary units of equivalent or greater value than would be required for onsite construction.

B. Any approval must be based on a finding by the governing body that the purposes of this chapter would be better served by implementation of the proposed alternative(s). In determining whether

the purposes of this chapter would be better served under the proposed alternative, the city shall consider (i) whether implementation of an alternative would overly concentrate SFHP units within any specific area and if so must reject the alternative unless the undesirable concentration of the SFHP units is offset by other identified benefits that flow from implementation of the alternative in issue; and (ii) the extent to which other factors affect the feasibility of prompt construction of the SFHP units on the property, such as costs and delays, the need for appraisal, site design, zoning, infrastructure, clear title, grading and environmental review.

C. The value of the fee in lieu contribution shall be established pursuant to administrative procedures.

D. The governing body, at its sole discretion, may grant a waiver of the SFHP requirements. Any approval of a waiver must be based on the finding that the condition of extreme hardship, as defined, cannot be sufficiently alleviated by the alternate means of compliance described in Paragraph A.

**Section 63. A new Section 26-1.34 SFCC 1987 is ordained to read:**

**26-1.34 [NEW MATERIAL.] Incentives for SFHP Developers.** Incentives for SFHP developers shall be as set forth in Section 14-8.11 SFCC 1987.

**Section 64. A new Section 26-1.35 SFCC 1987 is ordained to read:**

**26-1.35 [NEW MATERIAL.] Separability.** The provisions of this chapter are separable and the invalidity of any part of this chapter shall not affect the validity of the rest of the chapter.

**Section 65. A new Section 26-1.36 SFCC 1987 is ordained to read:**

**26-1.36 [NEW MATERIAL.] Effective Date.** The effective date of this Ordinance shall be August 25, 2005 (10 days after passage of this Ordinance).

**Section 66. A new Section 26-1.36 SFCC 1987 is ordained to read:**

**26-1.36 [NEW MATERIAL.] Annual Review.** The governing body shall review this Ordinance twelve months after the effective date and each year thereafter. The purpose of the review is to evaluate the effectiveness of the Ordinance. The review shall include at a minimum the number of SFHP

units or manufactured lots created, the number of qualified households placed and the number of density bonus units approved. The review shall also include an economic analysis regarding the impact on the city's revenues due to the fee waivers and other development incentives granted. The analysis should include options of how the city could recover such loss in revenue in order to continue paying for necessary infrastructure and services.”

PASSED, APPROVED, and ADOPTED this 15th day of August, 2005.

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LARRY A. DELGADO, MAYOR

ATTEST:

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YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

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BRUCE THOMPSON, CITY ATTORNEY

Jp/cmassign/affordable housing/SFHP ord

**CITY OF SANTA FE, NEW MEXICO**

**RESOLUTION NO. 2005-\_\_\_\_**

**INTRODUCED BY:**

**David Coss**

**Rebecca Wurzbarger**

**Matthew Ortiz**

**Patti Bushee**

**A RESOLUTION**

**ADOPTING ADMINISTRATIVE PROCEDURES FOR IMPLEMENTATION OF THE SANTA FE HOMES PROGRAM.**

**WHEREAS**, on \_\_\_\_\_, 2005, the governing body adopted Ordinance No. 2005-\_\_\_\_ establishing the Santa Fe Homes Program; and

**WHEREAS**, Ordinance No. 2005-\_\_\_\_ refers to administrative procedures approved by the governing body.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that** the administrative procedures for the Santa Fe Homes Program are adopted as shown on the attached exhibit A.

PASSED, APPROVED, and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
LARRY A. DELGADO, MAYOR

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

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BRUCE THOMPSON, CITY ATTORNEY

Jp/cmassign/affordable housing/admin proc res

# **Administrative Procedures for the City of Santa Fe**

## **Santa Fe Homes Program (SFHP)**

### **1. PURPOSE**

The purpose of these administrative procedures is to establish procedures for the City of Santa Fe (herein “City”) staff, boards, commissions or committees, the Governing Body and any agent of the City to implement and administer the Santa Fe Homes Program (SFHP).

### **2. AUTHORITY**

The SFHP ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to enact a housing code (N.M. Stat. Ann. 3-17-6 A (8) (1978)), to enact ordinances pursuant to its police power (N.M. Stat. Ann. 3-17-1 B (1978)), to enact zoning ordinances in general (N.M. Stat. Ann. 3-21-1 B(2) (1978)), and pursuant to any and all such other authority as may be applicable including but not limited to the City’s recognized authority to protect the general welfare of its citizens.

The SFHP ordinance is adopted pursuant to the City of Santa Fe’s powers under its municipal charter which was adopted effective March 15, 1998 pursuant to the Municipal Chart Act [§§ 3-15-1 to 3-15-16 NMSA 1978] and Article 10 Section 6 of the New Mexico State Constitution. Chapter 14, Land Development, Article 8, Division 11; and Section 26-1, herein, are collectively called the Santa Fe Homes Program (SFHP). The administrative procedures were first adopted by Resolution Number \_\_\_\_\_. All changes to the administrative procedures other than changes to area median income and related numerical data shall be reviewed and approved by resolution of

the governing body.

### **3. SCOPE**

This document and its attachment (the “administrative procedures”) set forth responsibilities, procedures, standards for administrative actions necessary to implement the SFHP ordinance, which include but are not limited to the following:

**3.1** Submitting and reviewing applicable residential development proposals and determining conditions of approval related to the provisions of SFHP Units or alternate means of compliance.

**3.2** Reviewing and executing agreements (herein called “SFHP agreements”) with property owners to ensure compliance with the SFHP ordinance and these administrative procedures.

**3.3** Monitoring the performance of residential property owners subject to such agreements, and any successors in title that are still subject to such agreements or other requirements of the SFHP ordinance and these administrative procedures (herein, collectively called “the applicant” or “applicants”) and taking appropriate action in the event of noncompliance.

### **4. RESPONSIBILITY FOR ADMINISTRATION**

**4.1 Office of Affordable Housing** – This city department or its agent shall be responsible for the following functions with regard to administration of the SFHP ordinance and these administrative procedures (herein, collectively called “SFHP”) set forth below. In addition, the Office of Affordable Housing shall be responsible for administering all prior affordable housing agreements and the prior affordable housing program (Housing Opportunity Program) until such time as all obligations under such agreements and program have been satisfied.

**4.1.1** Administering all functions of SFHP except for those which are specifically described as the responsibilities of other city departments and providing overall coordination among city departments.

- 4.1.2 Providing forms, information, technical assistance and certifications with regard to compliance with the SFHP ordinance.
- 4.1.3 Approving SFHP proposals for complying with SFHP from an applicant.
- 4.1.4 Recommending to the City Manager approval of SFHP Agreements based on their conformance with SFHP.
- 4.1.5 Ensuring that homebuyers and renters benefiting from SFHP are certified as eligible under SFHP.
- 4.1.6 Monitoring compliance with SFHP agreements.
- 4.1.7 Determining when sanctions for noncompliance should be invoked, and requesting the city manager to direct that appropriate city departments take appropriate action.
- 4.1.8 Performing other functions as required by SFHP.
- 4.1.9 Performing other functions not specifically described in the SFHP ordinance or these administrative procedures, but essential for successful administration of SFHP and within the powers and abilities of the department.
- 4.1.10 Ensuring the proceeds of liens are directed to the appropriate City trust fund.
- 4.1.12 Preparing the Affordable Housing provisions of annexation agreements.
- 4.1.13 Office of Affordable Housing responsibilities do not include or supersede those responsibilities of the Planning and Land Use Department as set forth in Section 14-8.11 SFCC 2005.

**4.2     Staff** – Administration of the SFHP shall be delegated to one or more staff in the Office of Affordable Housing. The staff shall be responsible for the day-to-day administration of the department’s responsibilities, and shall specifically be responsible for:

- 4.2.1 Recommending approval or disapproval of SFHP proposals, making recommendations to



the Governing Body regarding fee-in-lieu contributions, and making recommendations to the Governing Body on appeals of decisions regarding SFHP requirements.

4.2.2 Assuring that monitoring of compliance with SFHP agreements takes place, and in the event of noncompliance, requesting that the city manager request action by appropriate departments with regard to the department's responsibilities for administering SFHP.

4.2.3 Coordinating, training and monitoring the department staff and any appropriate agent of the department with regard to the department's or agent's responsibilities for administering SFHP.

4.2.4 Performing other duties as described in the SFHP ordinance or these administrative procedures.

**4.3 Planning and Land Use Department** – This city department or its designees shall be responsible for the following functions with regard to administration of SFHP:

4.3.1 Administering those parts of the ordinance that permit or require the City to approve density bonuses and certain other development incentives.

4.3.2 Requiring that applicants prepare SFHP proposals with the Office of Affordable Housing as a part of the development review process and prior to review of development applications and/or plans by the review body.

4.3.3 Where applicable and upon the City Manager's instruction, invoking sanctions for non-compliance with agreements, upon the request of the Office of Affordable Housing.

4.3.4 Performing other functions described as the responsibility of the Planning and Land Use Department in the SFHP ordinance or these administrative procedures.

**4.4 Public Utilities Department** – This city department or its designees shall require that as a condition of approval or availability, for the extension of or connection to city utilities to

residential developments located outside the city limits, applicants prepare SFHP proposals with the Office of Affordable Housing.

**4.5     City Attorney's Office** – This office or its agent shall be responsible for the following functions with regard to administration of SFHP:

4.5.1   Providing legal assistance when requested by the Office of Affordable Housing, Planning and Land Use Department, Public Utilities Department or City Manager.

4.5.2   Assisting in the preparation and execution of SFHP agreements.

4.5.3   When requested by the City Manager or Governing Body, pursuing such legal actions as may be necessary to enforce agreements, if such actions are permitted by common law, state statutes, any ordinance and/or any agreement.

**4.6     City Manager** – Except those SFHP agreements which are included within an annexation agreement and signed by the Mayor, the City Manager shall have the sole authority to execute SFHP agreements on behalf of the City, after reviewing the recommendations of the Office of Affordable Housing and the results of any successful appeals.

**4.7     Planning Commission** – This city commission shall be responsible for reviewing and approving certain development incentives described herein and for referring SFHP proposals back to the Office of Affordable Housing along with a statement as to the nature, reason and need for any changes in the SFHP proposal whenever the development incentives therein are denied in whole or in part.

**4.8     Governing Body** – The Governing Body shall be responsible for reviewing, and approving or denying, appeals of decisions of city departments or commissions with respect to SFHP requirements and for approving or denying requests for alternate means of compliance.

## **5.     APPLICABILITY**

SFHP requirements shall apply to development requests and approved developments, as follows:

**5.1     Developments and Actions Subject to SFHP** – SFHP applies to the following types of applications for development which propose dwelling units or buildings or portions of buildings which may be used for both non-residential and residential purposes. SFHP applies to the residential portion of the development:

5.1.1   Annexation pursuant to the petition process of Section 3-7-17 NMSA 1978 shall be subject to the SFHP requirements under the procedures of Paragraph 26-1.8(C) SFCC 1987.

5.1.2   Rezoning pursuant to §14-3.5, except those that only result in a family transfer as set forth in §14-3.7(E)(3)(b) or a division of land into two lots as set forth in §14-2.3(E)(1)(a).

5.1.3   Subdivision plat except a family transfer as set forth in §14-3.7(E)(3)(b) or a division of land into two lots as set forth in §14-2.3(E)(1)(a).

5.1.4   Increase in density for approved master plan or development plan.

5.1.5   Development plan except those which only require staff approval.

5.1.6   Projects located outside the city limits, requesting the extension of or connection to city utilities submitted to the city after August 23, 1999 shall be subject to this section as may be limited by SFHP and the city's jurisdiction.

5.1.7   Building permits for the remodel of more than two dwelling units for the purpose of converting rental units to ownership units.

**5.2     Developments Not Subject to SFHP** - The SFHP shall not apply to the following:

5.2.1   Any development or portion thereof which, upon effective date of the SFHP ordinance, was subject to any formal, written and binding agreement with the City of Santa Fe for providing affordable housing which agreement has been performed or remains in effect and may be

performed by and after the effective date of the SFHP ordinance.

5.2.2 Dwelling units or manufactured home lots for a school, hospital or similar institution to be used exclusively by its employees or enrolled students and their families. If the dwelling units are no longer used exclusively by its employees or enrolled students, the SFHP shall apply at the time the units are converted.

### **5.3 Applicability of Requirements for For-Sale and Rental Housing – SFHP**

developments will be subject to requirements for for-sale or rental housing, as follows:

5.3.1 For-sale housing – Developments will be subject solely to the SFHP requirements for for-sale housing if 100% of the dwelling units or manufactured home lots in the development are proposed to be sold.

5.3.2 Rental housing – Developments will be subject solely to the SFHP requirements for rental housing if 100% of the dwelling units or manufactured home lots in the development will be held by one ownership entity and are proposed to be rented.

5.3.3 Combination For-sale and Rental housing – In developments proposing both for-sale and rental housing, the requirements for both for-sale and rental housing shall apply. Requirements for for-sale housing shall apply to dwelling units or manufactured home lots proposed for sale and requirements for rental housing shall apply to dwelling units or manufactured home lots proposed to be rented.

5.3.4 Declaration of Proposed Mix – In any development proposing both for-sale and rental housing, the developer shall indicate in the SFHP proposal and SFHP agreement (subject to confirmation by the Office of Affordable Housing) the anticipated number of for-sale and rental dwelling units or manufactured home lots. An applicant may not change this proposed mix without receiving written approval from the Office of Affordable Housing in the form of a

revised SFHP proposal.

**5.4 Applicability to Annexations** -- Because annexations typically present more complex approval issues than rezonings, subdivision approvals or multiple-family development plan approvals, they are subject to applications of SFHP requirements as follows:

5.4.1 Applicants and the Office of Affordable Housing shall negotiate the number of SFHP units required or alternate means of compliance and any pertinent development incentives for the purposes of certifying a SFHP proposal to the Planning and Land Use Department or the Public Utilities Department (if development request is for the extension of or connection to city utilities beyond the city limits.

5.4.2 The negotiated agreement may exceed the requirements of SFHP but in no case shall the agreement provide for less affordable housing, higher home prices, or a lesser in-lieu contribution than required by SFHP.

5.4.3 All other SFHP requirements, including the requirement for a SFHP agreement, shall apply.

5.4.4 A complete SFHP agreement shall be included in the annexation agreement approved by the Governing Body.

**5.5 Applicability to Developments Proposed for Lot Sales** -- Developments in which the developer does not intend to directly sell homes but rather lots to builders or individual owners are still subject to SFHP requirements.

## **6. DEFINITIONS**

**Affordable Home Price** means the highest price at which an SFHP Home may be sold pursuant to Section 8.2. For purposes of this ordinance, the price of an SFHP home includes the base price, plus any fees charged of the buyer by the seller or a related entity, minus any of the

buyer's closing costs or financing costs paid by the seller, as indicated by the settlement statement for the sale.

**Affordable Manufactured Home Lot Price** means the highest price at which an SFHP Manufactured Home Lot may be sold pursuant to Subsection 8.7.

**Affordable Rent** means the highest monthly rent that may be charged for a SFHP rental unit or SFHP manufactured home lot pursuant to Section 9.2.

**Allowable Option Upgrades** are additions and/or modifications to the standard features of an SFHP home chosen solely at the option of the SFHP buyer to upgrade the standard features of the SFHP home.

**Alternate Means of Compliance** means compliance with the SFHP ordinance by payment of in-lieu contributions as approved.

**Area Median Income** means the median income for the Santa Fe metropolitan statistical area as adjusted for various household sizes and published and revised periodically by the United States Department of Housing and Urban Development.

**Applicant** means a property owner or agent of a property owner who submits a development request to the city which is subject to any SFHP requirements, or any successor in title that is subject to SFHP requirements.

**City** means the city of Santa Fe or its agent.

**City Attorney's Office** means the City Attorney's Office of the City of Santa Fe, its agent or successor.

**City Code** means Santa Fe City Code 1987 (SFCC 1987).

**County** means Santa Fe County

**Dwelling unit** means one (1) room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and bathroom facilities.

**Extreme hardship** means a condition occurring as a direct consequence of the SFHP ordinance which: (a) deprives a property owner of all economically viable use of the subject property taken

as a whole; or (b) would require the property owner to lose money on the development taken as a whole and the property owner can demonstrate to the Governing Body's satisfaction that said loss would be an unavoidable consequence of the SFHP requirement for construction of SFHP units; or (c) the property owner can demonstrate to the council's satisfaction that complying with the requirements of this Chapter would constitute taking property in violation of the Constitution of the United States or New Mexico.

**Fractional Unit Fee** means the fee charged to developers to satisfy the required housing obligation in the event that the formulas provided in Sections 8 and 9 result in a fraction.

**Housing Expense Ratio** means the ratio of housing costs, including mortgage payments, hazard insurance, private mortgage insurance and taxes, to household monthly income.

**Income Range** means the range of annual incomes used in the determination of eligibility of an SFHP home buyer or an SFHP tenant. The Income Ranges are:

Income Range 1: 50% of Area Median Income or lower

Income Range 2: More than 50% but not more than 65% of Area Median Income

Income Range 3: More than 65% but not more than 80% of Area Median Income

Income Range 4: more than 80% but not more than 100% of Area Median Income

**Manufactured home lot** means a lot which is marketed and either sold or rented for the purposes of the placement of a manufactured home.

**Maximum Option Upgrade Allowance** means the maximum price paid by the SFHP buyer for Allowable Option Upgrades pursuant to Section 8.2.4.

**Median income** means the Area Median Income as defined.

**Office of Affordable Housing** means the Office of Affordable Housing of the City, its agent or successor.

**Planning and Land Use Department** means the Planning and Land Use Department of the city, its agent or successor.

**Public Utilities Department** means the Public Utilities Department of the city of Santa Fe, its agent or successor.

**SFHP** means the Santa Fe Homes Program

**SFHP agreement** means an agreement between a property owner of record and the city whereby the city confers benefits in the form of development incentives to the property owner in exchange for compliance with SFHP with regard to providing required SFHP units or alternate means of compliance.

**SFHP developer** means an owner of a property subject to any SFHP requirements, who is carrying out any phase of developing the subject tract, or as defined in this section, certain successors in title.

**SFHP development** means a tract of land or any improvements thereon which are subject to a SFHP agreement.

**SFHP home** means a dwelling unit marketed and sold to satisfy SFHP requirements.

**SFHP home buyer** means a purchaser of a SFHP home or the entire household occupying a SFHP home or the purchaser or entire household occupying a SFHP manufactured home lot.

**SFHP manufactured home lot** means a lot which is marketed and either sold or rented for the purposes of the placement of a manufactured home and to satisfy SFHP requirements.

**SFHP property owner** means the owner of any property which is subject to SFHP requirements, or as defined in this section, certain successors in title.

**SFHP rental unit** means a rental unit marketed and leased specifically to satisfy SFHP requirements.

**SFHP tenant** means a person who is a lessee of a SFHP rental unit, or a manufactured home rental lot, or the entire household occupying a SFHP rental unit or SFHP manufactured home lot.

**SFHP unit** means a dwelling unit or manufactured home lot required to be provided on site by a SFHP developer or a SFHP property owner to satisfy the SFHP requirements.

**Unit** means a dwelling unit as defined in Chapter 14 SFCC 1987.

## **7. SFHP PROPOSALS AND AGREEMENTS**

Following are standards and procedures for preparation, review and approval of SFHP proposals and agreements:



**7.1 Requirement for SFHP Proposals and Agreements** - SFHP proposals and agreements shall be required by the City for all residential developments described in Section 5 of this document. SFHP proposals shall be approved by the Office of Affordable Housing prior to the Planning Commission's, or, in case of development as described in Section 5.1.2, the Extraterritorial Commission's consideration of an applicant's proposal.

**7.2 Scope and Content of SFHP Proposals and Agreements** – SFHP proposals and agreements shall include all of the following:

7.2.1 The development request (subdivision plat, development plan, etc)

7.2.2 The applicant's plan for providing required affordable housing or alternate means of compliance as required by SFHP. This shall include a specific description of the number of SFHP units to be constructed or created and the sale or rental prices of those units. This shall also include a timetable for delivering required SFHP units or alternate means of compliance.

7.2.3 The applicability of proposed elements of the agreement to successors in title, and the legal mechanisms by which obligations will be passed on to the successors.

7.2.4 The responsibility of the City or its agent for performing income certifications in selling or renting SFHP units, and the responsibility of the City or its agent for certifying homes sales as complying with SFHP.

7.2.5 The applicant's requirements for providing the City or its agent with reports on its compliance with the SFHP agreement.

7.2.6 Provisions granting access to the City or its agent to inspect records and developments sites and the opportunity to interview SFHP buyers or renters.

7.2.7 The City's obligation to give notice in writing and in a timely fashion of violations including what actions are needed to correct the violation and time frame for compliance.

7.2.8 The City's right to impose sanctions or take other actions after notice of violation has been given and not complied with.

7.2.9 The expiration date of the agreement and any conditions under which it may be terminated earlier than that date.

7.2.10 The responsibility of the applicant, a successor or the City to record regulatory agreements or liens in the public records that will ensure long-term affordability of SFHP units provided pursuant to SFHP.

7.2.11 A declaration by the applicant of the make-up of the development with respect to rental SFHP units and for-sale SFHP units.

7.2.12 Development incentives to be granted by the city in consideration of the applicant's agreement to construct or create SFHP units.

7.2.13 The name of the qualified organization or organizations that has been engaged to provide marketing services, income verifications, training, maintenance of waiting lists or other allocation process, and home purchase and finance counseling to prospective SFHP buyers and SFHP tenants.

7.2.14 Other terms and conditions necessary to implement the requirements of the SFHP with regard to the subject development.

7.2.15 In developments where demand is expected to outstrip supply, a description of a fair and equitable method to be used for the allocation of SFHP units.

**7.3 Pre-Submission Conference** – Prior to submitting any development request to which SFHP applies, the prospective applicant shall schedule and hold a pre-submission conference with the Office of Affordable Housing with regard to the development proposal and SFHP requirements.

**7.4 Submission of SFHP Proposals** – A SFHP proposal shall be submitted with any development request to the City to which SFHP applies.

**7.5 Review of SFHP Proposals** – After submittal, each SFHP proposal shall be reviewed by the Office of Affordable Housing. After review, the Office of Affordable Housing shall take one of two actions with regard to a SFHP proposal:

7.5.1 Approve the SFHP proposal if the proposal meets SFHP requirements.

7.5.2 Disapprove the SFHP proposal and refer it back to the applicant if it does not meet SFHP requirements. In this case, the Office of Affordable Housing shall make written comments regarding the proposal's deficiencies.

**7.6 Re-submittal of SFHP Proposals After Disapproval** -- If a SFHP proposal has been disapproved, an applicant may resubmit revised proposals so long as changes to the SFHP proposal are substantive.

**7.7 Re-submittal of Revised Proposals After Issuance of Certificate of Compliance** – If the applicant wishes to resubmit or amend a SFHP proposal due to changes in the development request as the development proposal proceeds through the development review process or due to the final determination by the reviewing body that any or all development incentives included in the SFHP proposal will not be granted or for other reasons, the developer must resubmit a new or amended SFHP proposal for approval by the Office of Affordable Housing.

**7.8 Appeals** – An applicant may appeal actions of the City with regard to SFHP as follows:

7.8.1 An applicant may appeal if:

- a. The applicant believes that City staff misinterpreted the SFHP requirements in disapproving the SFHP proposal, and the proposal as written conforms to SFHP requirements, or
- b. The applicant is aggrieved by any other action of the City with regard to SFHP.

7.8.2 All such appeals shall be made on forms provided by the Office of Affordable Housing, and must be accompanied by a description of the City action which is being appealed and the grounds for appeal. If the applicant is appealing staff disapproval of a SFHP proposal, the appeal must be accompanied by:

- a. A proposed SFHP proposal that has been disapproved by staff
- b. Staff comments on the SFHP proposal, including the reasons for disapproval of the proposal.

7.8.3 Appeals of staff decisions shall be heard by the Governing Body.

7.8.4 If a SFHP proposal is subject to appeal, the outcome of the appeal process may determine whether the applicant is entitled to certain development incentives. In this case, the applicant may choose one of the following options with regard to continued processing of the development proposal:

- a. Processing may be suspended until the appeal is heard and decided.
- b. Processing may be continued. In this case, the applicant may determine whether to incorporate into his or her development proposal any development incentives which are subject to the outcome of the appeal.

**7.9 Approval of Development Proposals Subject to SFHP** – No development proposal subject to SFHP requirements may be heard by the review body unless a SFHP proposal has been approved as to compliance with SFHP by the Office of Affordable Housing or appealed as set forth in Section 7.8. Such SFHP proposal presented by the applicant shall correspond to the development proposal as approved by City.

**7.10 Execution of SFHP Agreements** – After all development approvals (except for building permits) have been received, the SFHP agreement may be executed by the City Manager and the applicant. The SFHP agreement shall be filed in the Santa Fe County Clerk's office prior to any permits being issued or the start of any work. The agreement shall be referred to and recorded as follows:

- a. It shall be referred to in the annexation agreement or the rezoning ordinance and referred to on the annexation plat, final subdivision plot, or final development plan as

appropriate. It shall be included as a condition of approval for the extension of or connection to city utilities beyond the city limits.

b. The agreement shall be recorded at the County Clerk's office at the time of recording the annexation plat, rezoning ordinance, final subdivision plat, final development plan, as appropriate, or prior to issuance of a building permit if the previous documents are not required, in which case a copy of the agreement shall be included with the submittal for a building permit.

**7.11 Noncompliance with Agreements** – It shall be unlawful for any property owner subject to SFHP to violate any provision of or fail to comply with any of the requirements of SFHP or an SFHP agreement. Whenever the city finds that a property owner has violated or is violating a requirement of SFHP or of an SFHP agreement, the city shall issue a written notice of violation. The notice of violation shall:

- a. Set forth the specific violation found
- b. Establish a specific and reasonable period of time for the correction of the violation found
- c. State that failure to comply with the notice may result in the following sanctions, depending upon which is deemed most effective and appropriate considering the nature of the noncompliance:
  1. Withholding of the recording of plats or plans
  2. Withholding of building permits
  3. Issuing stop work orders
  4. Revoking building permits
  5. Withholding or revoking certificates of occupancy

7.11.1 The notice shall be hand delivered to the property owner or mailed registered mail, return receipt requested to the last known address.

7.11.2 The Notice shall inform the property owner that he may request a hearing prior to any sanction being imposed.

**7.12 Non-compliance hearings** -- In the event that a property owner notified of a violation requests a hearing, the hearing shall be conducted by the director of the Office of Affordable Housing after giving notice to the person requesting the hearing.

7.12.1 All parties shall be allowed to respond and present evidence and argument on all issues involved.

7.12.2 A record of the hearing shall be made

7.12.3 Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed

7.12.4 Notice of the final decision shall be in writing and hand delivered to the property owner or mailed registered mail, return receipt requested to the last-known address.

7.12.5 Decisions by the director of the Office of Affordable Housing shall be final and may be appealed in district court.

**7.13 Legal Action and Potential Fines** – If a property owner fails to comply with , the final decision of the director of the Office of Affordable Housing, the Office of Affordable Housing shall notify the City Manager and the Planning and Land Use Department of the non-compliance and request that applicable sanctions be imposed.

**7.14 Enforcement outside the City Limits** – If after having been given notice as set forth in section 7.11, a property owner subject to a SFHP agreement fails to comply with the SFHP, the Office of Affordable Housing may request that the City Manager authorize the City Attorney's Office to pursue enforcement of specific performance requirements in accordance with the SFHP agreement in an appropriate court of law.

## **8. REQUIREMENTS FOR FOR-SALE HOUSING**

SFHP homes and manufactured home lots shall be marketed, sold and occupied according to these criteria:

**8.1 Eligible Buyers** – Following are general eligibility criteria for purchasing SFHP units:

8.1.1 SFHP homes shall be sold to and occupied by an eligible owner-occupant household. An eligible owner-occupant household for a SFHP home shall meet eligibility requirements as follows:

a. Income – The household income of a SFHP buyer shall not exceed the defined Income Ranges as set forth in Section 6.

b. Liquid Assets – If the SFHP buyer has liquid assets exceeding \$25,000, additional income shall be imputed at the rate of 20% of the liquid assets exceeding \$25,000. This imputed income shall be added to the yearly income of the SFHP buyer for the purpose of determining income eligibility. Liquid assets include cash, cash equivalents, stocks, bonds, real estate, and other assets readily converted to cash. Liquid assets do not include retirement funds that are not readily accessible without the payment of a penalty, trust funds not controlled by the potential

purchaser, personal property such as furniture or automobiles, educational accounts committed to a dependent, or other assets not readily accessible to the purchaser.

c. Minimum household size – The household size may not be smaller than the following minimum household sizes.

<i>Unit Size</i>	<i>Minimum Household Size</i>
Efficiency/Studio	1 person household
1 Bedroom	1 person household
2 Bedrooms	1 person household
3 Bedrooms	2 person household
4 bedrooms	3 person household

The Office of Affordable Housing may approve a smaller household size upon the request of the developer or the SFHP homebuyer.

d. First time homebuyer status -- Eligible buyers must meet any one of the following criteria:

1. A first-time homebuyer. A first-time buyer cannot have had an interest in a main home (not including a manufactured home) during the 2-year period ending on the date of acquisition of the new home. If the buyer is married, the spouse must also meet this no-ownership requirement.
2. Owned a home in the last two years but had transferred title to another party because of divorce or separation from the co-owner of the home.
3. Currently owns and occupies a manufactured home as his only residence.
4. Currently owns a home in a location outside of Santa Fe County, but had previously lived in Santa Fe County for a least ten years, and wishes to return to Santa Fe. (The current home must be sold before or at the time of purchasing an affordable home under the SFHP.)

e. Eligible Financing – to be eligible, SFHP buyers must finance the purchase of the

home or manufactured home lot with a prime mortgage loan, which is defined as a mortgage loan with a interest rate that does not exceed 100 basis points above the New Mexico Mortgage Finance Authority Mortgage Saver rate and does not charge in excess of a 2% origination fee.

8.1.2 SFHP manufactured home lots shall be sold to and occupied by an eligible owner-occupant household. An eligible owner-occupant household for a SFHP manufactured home lot shall meet eligibility requirements as follows:

a. Income – The household income of a SFHP manufactured home lot buyer shall not exceed the defined Income Ranges for a 3 person household, as set forth in Section 6, regardless of the household size of the SFHP buyer.

b. Liquid Assets – If the SFHP buyer has liquid assets exceeding \$25,000, additional income shall be imputed at the rate of 20% of the liquid assets exceeding \$25,000. This imputed income shall be added to the yearly income of the SFHP buyer for the purpose of determining income eligibility. Liquid assets include cash, cash equivalents, stocks, bonds, real estate, and other assets readily converted to cash. Liquid assets do not include retirement funds that are not readily accessible without the payment of a penalty, trust funds not controlled by the potential purchaser, personal property such as furniture or automobiles, educational accounts committed to a dependent, or other assets not readily accessible to the purchaser.

c. First time homebuyer status -- Eligible buyers must meet any *one* of the following criteria:

1. A first-time homebuyer. A first-time buyer cannot have had an interest in a main home, not including a manufactured home, during the 2-year period ending on the date of acquisition of the new home. If the buyer is married, the spouse must also meet this no-ownership requirement.
2. Owned a home in the last two years but had transferred title to another party because of divorce or separation from the co-owner of the home.
3. Currently owns and occupies a manufactured home as his only residence.
4. Currently owns a home in a location outside of Santa Fe County, but had previously lived in Santa Fe County for a least ten years, and wishes to return

to Santa Fe. (The current home must be sold before or at the time of purchasing an affordable home under the Program.)

8.1.3 A household's eligibility shall have been certified by the City or its agent no more than 90 days prior to a purchase contract being executed for a SFHP home or SFHP manufactured home lot.

## **8.2 SFHP Home Prices**

8.2.1 Sale prices of SFHP homes being sold to an eligible owner-occupant pursuant to a SFHP agreement shall be at or below the following amounts:

<i>Income Range</i>	<i>Affordable Home Price Studio</i>	<i>Affordable Home Price 1 bedroom</i>	<i>Affordable Home Price 2 bedroom</i>	<i>Affordable Home Price 3 bedroom</i>	<i>Affordable Home Price 4 bedroom</i>
Income Range 2	\$74,500	\$85,000	\$97,000	\$109,000	\$122,000
Income Range 3	\$100,500	\$111,000	\$126,000	\$142,000	\$158,000
Income Range 4	\$125,500	\$136,000	\$155,000	\$175,000	\$194,000

8.2.2 The actual sale price shall include all of the following costs to the buyer as described on the settlement sheet for the sale:

- a. The sales price of the home
- b. Any sales commission which is payable by the buyer
- c. Any other settlement costs charged to the buyer which in Santa Fe are normally charged to the seller.

8.2.3 The SFHP Affordable Home Prices and Affordable Manufactured Home Lot Prices are effective for a specific SFHP Home or Manufactured Home Lot only if the SFHP buyer will not be required to pay a monthly fee such as a homeowners' association fee, condominium fee or common area fee. If a SFHP home or manufactured home lot is proposed with such fees, the developer shall lower the SFHP home price or SFHP manufactured home lot price so that the buyer's mortgage or manufactured home loan principal amount and, accordingly, the buyer's monthly mortgage payments, are reduced by a similar amount. The adjusted prices shall be reflected in the SFHP Agreement.



8.2.4 The actual sale price of a SFHP home may not be achieved by use of subsidies from any source other than the developer, so that, given the scarcity of subsidy funds, all SFHP applicants will be treated equally and fairly. However, the City encourages the use of such subsidies to reduce prices of SFHP homes from the maximum amounts allowed by SFHP or a lesser amount downward, or to fund or partially fund down payments and closing costs of qualified buyers. The restriction on use of subsidies shall not apply to non-profit affordable housing organizations.

#### 8.2.5 Allowable Option Upgrades

a. The Affordable Home Price may be increased at the request of the SFHP home buyer by the price of Allowable Option Upgrades, not to exceed the Maximum Option Upgrade Allowance.

b. At the time of the enactment of SFHP, the Maximum Option Upgrade Allowance shall be \$5,000. Beginning in 2006 and every year thereafter, the Office of Affordable Housing shall review and adjust the Maximum Option Upgrade Allowance based on changes in the Area Median Income for the previous 12 months.

c. The following features are considered standard features that must be included in a SFHP home and for which the builder shall not charge extra:

New kitchen range

New kitchen refrigerator

Hookups for clothes washer, dryer, and built-in dishwasher

Central heating systems.

### **8.3 Adjustment of SFHP Home Prices**

8.3.1 Beginning in 2006 and annually thereafter, the Office of Affordable Housing shall review and adjust the Affordable Home Price in each Income Range and for each unit size by the same percentage change as the percentage change in Area Median Income from the previous 12 months.

8.3.2 The Office of Affordable Housing shall publish new Affordable Home Prices immediately upon adjustment and, within 30 days, shall report to the Governing Body the new Affordable Home Prices.

8.3.3. Beginning in 2007 and every two years thereafter, the Office of Affordable Housing shall review the factors and assumptions used to determine housing expense ratios in Section 8.6 and shall report to the Governing Body on whether or not housing expense ratios associated with the Affordable Home Prices, as adjusted for changes in AMI, are still at or below 33% for households within each applicable Income Range. The Office of Affordable Housing may make

recommendations to the Governing Body to amend the SFHP ordinance at any time if it determines that the housing expense ratios associated with the affordable home prices exceed 33% due to changes in factors such as average interest rates or taxes. Nothing herein shall prevent the Governing Body from amending the SFHP ordinance without such a recommendation from the Office of Affordable Housing.

**8.4 Establishment of SFHP Home Prices** - SFHP home prices are established to maintain a target housing expense ratio of no more than 33% for the assumed household size with the lowest household income in each applicable Income Range, with the exception of the affordable home price for a studio. The affordable home price for a studio home is based on an estimated marginal cost savings between a studio and a 1 bedroom home of \$70 per square foot. Since the assumed household size for a studio is 1 person the housing expense ratio for the lowest income household will be lower than 33%

**8.5 Factors in Determining Housing Expense Ratios** -- The following assumptions are used in the determination of housing expense ratios:

- a. Assumed household sizes:

<i>Unit Size</i>	<i>Assumed household size</i>
1 Bedroom	1 person
2 Bedroom	2 person
3 Bedroom	3 person
4 Bedroom	4 person

(Note: These assumed household sizes are for determination of housing expense ratios only. Minimum household sizes are contained in Section 8.1)

- b. Interest rate: 6.0%
- c. Term of loan: 30 years
- d. Private mortgage insurance: 0.075% of home price per month
- e. Hazard insurance: 0.0283% of home price per month
- f. Taxes: 0.0467% of home price per month

**8.6 Sample Determination of Housing Expense Ratio** - For purposes of example, following are steps used to determine the housing expense ratio for a 3 bedroom home and a 3 person household in Income Range 3:

- a. Determine Home Size: 3 Bedroom

- b. Determine Applicable Income Range: Income Range 3 (more than 65% but not more than 80%)
- c. Determine Home Price: \$142,000
- d. Determine Assumed Household size: 3 person
- e. Determine median income for 3 person household (as published by HUD): \$59,400
- f. Determine lowest income for applicable Income Range:  $65\% \times \$59,400 = \$38,610$
- g. Determine monthly income:  $\$38,610 / 12 = \$3,217.50$
- h. Determine Principal and Interest Payment (using mortgage payment calculator): \$851
- i. Determine Private Mortgage Insurance:  $0.075\% \times \$142,000 = \$107$
- j. Determine Hazard Insurance:  $0.0283\% \times \$142,000 = \$40$
- k. Determine taxes:  $0.0467\% \times \$142,000 = \$66$
- l. Determine total monthly payment:  $\$851 + \$107 + \$40 + \$66 = \$1,064$
- m. Determine housing expense ratio:  $\$1,064 / \$3,217.50 = 33\%$

## 8.7 **SFHP Manufactured Home Lot Prices**

8.7.1 SFHP manufactured home lot prices are established as 25% of the cost of a 3 bedroom home. SFHP manufactured home lot prices apply to all households, regardless of size, with a household income within each applicable Income Range.

8.7.2 Sale prices of SFHP manufactured home lots being sold to an eligible owner-occupant pursuant to a SFHP agreement shall be at or below the following amounts:

<i>Income Range</i>	<i>Affordable Manufactured Home Lot Price</i>
Income Range 2	\$27,250
Income Range 3	\$35,500

Income Range 4	\$43,750
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8.7.3 Beginning in 2006 and annually thereafter, the Office of Affordable Housing shall review and adjust the Affordable Manufactured Home Lot Price in each Income Range by the same percentage change as the percentage change in Area Median Income from the previous 12 months.

8.7.4 The Office of Affordable Housing shall publish new Affordable Manufactured Home Lot Prices immediately upon adjustment and, within 30 days, shall report to the Governing Body the new Affordable Manufactured Home Lot Prices.

**8.8 Required Number of SFHP Units in a Development** – Thirty percent of the total number of dwelling units or manufactured home lots offered for sale in an SFHP development shall be SFHP Homes or SFHP Manufactured Home Lots, as follows:

a. Ten percent (10%) of the total dwelling units or manufactured home lots shall be sold at or below the Affordable Home Price or Affordable Manufactured Home Lot Price, as applicable, for Income Range 2.

b. Ten percent (10%) of the total dwelling units or manufactured home lots shall be sold at or below the Affordable Home Price or Affordable Manufactured Home Lot Price, as applicable, for Income Range 3, and

c. Ten percent (10%) of the total dwelling units or manufactured home lots shall be sold at or below the Affordable Home Price or Affordable Manufactured Home Lot Price, as applicable, for Income Range 4.

8.8.1 If an applicant exceeds the percentage in Income Range 2 or Income Range 3 as set forth above, the requirement in any higher Income Range may be reduced by the same percentage.

8.8.2 The whole number resulting from the formula shall be the number of SFHP units required to be constructed or created and the remaining fraction may be satisfied with the fractional unit fee described in Section 8.9.

8.8.3 In the event that two or fewer SFHP Homes or SFHP manufactured home lots are required, the SFHP Homes or manufactured home lots shall be affordable to income range 3 or income range 2.

8.8.4 The required number of SFHP Dwelling Units or SFHP Manufactured Home Lots shall be determined based on the total number of units proposed, including any units proposed as a result of the density bonus described in Section 13.2.

**8.9 Providing “Fractions” of Homes** –If the calculation described in Section 8.8 results in a fraction, the whole number resulting from the formula shall be the number of SFHP units

required to be constructed or created and the remaining fraction may be satisfied with the fractional unit fee. The fee shall be the base fractional fee multiplied by remaining fraction. The base fractional fee shall be half of the Affordable Home Price of a 3 Bedroom Unit in Income Range 2. This contribution is not and shall not be used as an alternate means of compliance. The contribution shall be made prior to recording the SFHP Agreement. The proceeds of the fee shall be credited to the housing trust fund approved by the governing body.

**8.10 Minimum Structural Requirements for SFHP Homes** - SFHP homes shall be built to conform to local, state and federal laws, and these additional criteria concerning design, equipment and physical features:

8.10.1

a. Minimum Bathrooms and Floor Area - SFHP homes shall be constructed according to the minimum requirements for bathrooms and square footage of habitable residential space described below:

Unit Type	Minimum Number of Bathrooms	Minimum Square Footage
Studio	1	750 square feet
1 Bedroom	1	850 square feet
2 Bedrooms	1	1,000 square feet
3 Bedrooms	2	1,150 square feet
4 Bedrooms	2	1,250 square feet

Minimum floor areas of habitable residential space include partitions, closets, heated utility rooms, halls and stairways but exclude attics, porches, unfinished basements, garages and unheated storage space.

b. The minimum sizes specified shall not apply to units converted from existing rental units to ownership units. In such developments, the minimum sizes shall be the same as the sizes of the non-SFHP Homes.

c. The applicant may request smaller minimum sizes if he demonstrates, subject to confirmation by the Office of Affordable Housing, that the required sizes are larger than the sizes of the non-SFHP Homes.

8.10.2 Equipment and equipment hookups – Each home shall, at a minimum, include:

- a. a new kitchen range and refrigerator,
- b. hookups for a clothes washer, dryer and built-in dishwasher,
- c. central heating systems. Resistance electric heating is not permitted unless the applicable homes have exceptionally low heat loads and the City approves this alternate in the SFHP Agreement or otherwise in writing.

8.10.3 Design and location – The proposed design and location of the affordable units shall be reviewed and approved by the Office of Affordable Housing in order to achieve architectural and landscaping integration with other units in the development.

#### **8.11 Required Mix Of Unit Types**

8.11.1 So that SFHP Homes will serve a wide range of household sizes, the mix of unit types in for-sale SFHP developments shall be determined in accordance with the following:

Unit Size	Required percentage of SFHP Homes
Studio, 1 Bedroom and 2 Bedroom	25%
3 Bedroom	50%
4 Bedroom	25%

If fractions result from this formula, round up for .5 or more and round down for less than .5. If rounding results in a total that is more than the total number of SFHP units required, the smallest required unit(s) will be eliminated so that the total equals the required number. The Office of Affordable Housing shall have the authority to further specify the required percentage of studio,

1-bedroom and 2-bedroom homes, taking into consideration the type of non-SFHP units offered for sale in the development.

8.11.2 The SFHP developer may request approval from the Office of Affordable Housing to provide a mix of unit sizes that varies from the above. Factors that may be considered as a basis for approval of a different unit size mix include, but are not limited to:

- a. A different mix would better match the mix of non-SFHP homes within the development
- b. A different mix would better match the consumer demand for SFHP homes

8.11.3 The mix of type of SFHP Homes in a development converted from existing rental units to ownership units shall be in proportion to the mix of non- SFHP Homes offered for sale.

8.11.4 In a development of detached ownership units, the SFHP units shall be detached. In a development with a mix of detached and attached ownership units, the proportion of detached SFHP ownership units shall be no less than the proportion of detached non-SFHP ownership units.

**8.12 Marketing To and Certifying Buyers for SFHP Homes** – SFHP developers shall market SFHP homes or SFHP manufactured home lots in accordance with the following requirements:

8.12.1 An SFHP Home may not be marketed and sold to a household that does not meet the eligibility requirements described in Section 8.1.2.

8.12.2 Marketing Materials – Brochures, advertisements and other marketing materials shall clearly state the policies of the SFHP program with regard to pricing of SFHP homes, long term affordability liens, and buyer eligibility (both of the program in general and the eligibility to buy specific homes).

8.12.3 Purchase contracts – SFHP developers and SFHP buyers may execute only purchase contracts that are approved for form by the City and include language provided by the City, which will require that an appropriate disclosure form be provided to and explained to the SFHP buyer prior to execution of the contract. The disclosure form will explain any deed restriction, restrictive covenants and/or liens that are placed on the SFHP home to ensure long-term affordability.

**8.13 Allocation of SFHP Units**– SFHP is established to benefit all residents of the City and, as such, it is the policy of the City that all eligible potential buyers have the same opportunity to purchase SFHP homes or SFHP manufactured home lots.

8.13.1 The City or its agent shall maintain and make available lists of prospective SFHP buyers who have passed preliminary prequalifications for financing. For SFHP developments for which the city or its agent expects immediate effective demand to outstrip the supply, the city or its agent shall establish and maintain an equitable process for allocating rights to purchase the homes or manufactured home lots. In developments where the city or its agent has established such a process, the developer shall be required to follow the process when selecting SFHP buyers. For developments other than those described above, the developer shall establish and maintain an equitable process of marketing homes and manufactured home lots, including waiting lists where demand exceeds supply.

8.13.2 Each development with SFHP homes or SFHP manufactured home lots for sale, including annexations subject to SFHP, shall engage a qualified organization or organizations to provide marketing services, income certifications, homebuyer training, maintenance of waiting lists, and home purchase and finance counseling to prospective SFHP buyers. The Office of Affordable Housing shall establish a fair and competitive process for selecting the organization or organizations providing these services. The organization and the SFHP developer shall enter into a written agreement that describes the scope of services and fee structure. Notwithstanding those requirements, and in order to assure access to SFHP homes and manufactured home lots by all potentially qualified SFHP buyers, any other service provider operating a homebuyer training, counseling and certification program approved by the Office of Affordable Housing may refer its clients to the selected organization for possible purchase of the SFHP homes or manufactured



home lots.

8.13.3 Prior to executing a purchase contract for any SFHP Home or SFHP manufactured home lot, the prospective SFHP buyer shall be certified as meeting the SFHP requirements described in Section 8.1.2 by the city or its agent.

**8.14 Filing of Deed Restrictions and Liens** - A SFHP developer selling a SFHP Home or SFHP Manufactured Home Lot shall cause to be recorded in the County land records, simultaneous with the recording of the deed of sale, a form of deed restriction, or restrictive covenant, or other legal instrument that fulfills the requirements of Section 12 with regard to controls placed on the occupancy and resale of SFHP homes. The effect of the recordation of said deed restriction shall be to create, in accordance with state law, an obligation that runs with the property. The City must approve the form of such deed restrictions prior to recordation. Initial affordability shall be achieved by including in the SFHP agreement terms of an escrow instruction requiring certification of SFHP compliance by an escrow agent.

**8.15 Verification and Certification by the City of Completed Sales** - City staff may determine if each completed SFHP sale in a SFHP development complies with the ordinance, or if not, that appropriate action is taken. The procedures are as follows:

8.15.1 Notice of sale of a SFHP Unit – The City must receive notice of the sale in writing and also be given: (a) a copy of the settlement sheet for the sale of the property, (b) copies of any legal instruments related to the City’s long-term affordability requirements in the exact form that they will be executed and filed to meet requires of the SFHP Agreement, and (c) bills, statements or other documents indicating any other costs associated with the sale of the SFHP home or SFHP manufactured home lot. The City must approve the form and content of any legal instruments related to long-term affordability prior to recordation.

8.15.2 Sales in compliance – Sales in compliance will be certified as such and shall count toward fulfillment of the developer’s SFHP Agreement.

8.15.3 Sales not in compliance – When a sale is found to be not in compliance with the SFHP Ordinance or a SFHP agreement or the information is insufficient to determine compliance, the owner will be notified in writing and have the opportunity to rectify the noncompliance or information lacking with respect to that SFHP home. However, in the event of such noncompliance, the City shall not certify any sale of a SFHP home, and reserves the right not to certify the sale of any further non-SFHP units, while recognizing that this will create an encumbrance and title flaw if any sale is made without such certification.

**8.16 Rental Prohibition** – SFHP Homes and SFHP Manufactured Home Lots shall not be rented to a second party, except as approved in writing by the Office of Affordable Housing for instances in which the owner is under duress by reason of unemployment, family medical emergencies, or inability to sell the home for an amount equal to or greater than the original sale price, or other unique circumstances of family hardship. In providing written permission, the Office of Affordable Housing shall specify a limit on the rental, not to exceed 18 months.

## **9. REQUIREMENTS FOR SFHP RENTAL HOUSING**

SFHP rental units shall be marketed, leased, and occupied according to these criteria:

**9.1 Eligible Renters** – Following are general eligibility criteria for leasing SFHP units:

9.1.1 SFHP rental units shall be leased to and occupied by an eligible owner-occupant household. An eligible owner-occupant household for a SFHP rental unit shall meet eligibility requirements as follows:

a. Income – The household income of a SFHP tenant shall not exceed the defined Income Ranges as set forth in Section 6.

b. Liquid Assets – If the SFHP tenant has liquid assets exceeding \$25,000, additional income shall be imputed at the rate of 20% of the liquid assets exceeding \$25,000. This imputed income shall be added to the yearly income of the SFHP tenant for the purpose of determining income eligibility. Liquid assets include cash, cash equivalents, stocks, bonds, real estate, and other assets readily converted to cash. Liquid assets do not include retirement funds that are not readily accessible without the payment of a penalty, trust funds not controlled by the potential purchaser, personal property such as furniture or automobiles, educational accounts committed to a dependent, or other assets not readily accessible to the purchaser.

c. Minimum household size – The household size may not be smaller than the following minimum household sizes.

<i>Unit Size</i>	<i>Minimum Household Size</i>
Efficiency/Studio	1 person household
1 Bedroom	1 person household
2 Bedrooms	1 person household
3 Bedrooms	2 person household
4 bedrooms	3 person household

The Office of Affordable Housing may approve a smaller household size upon the request of the developer or the SFHP tenant.

9.1.2 SFHP rental manufactured home lots shall be leased and occupied by an eligible household. An eligible household for a SFHP rental manufactured home lot shall meet eligibility requirements as follows:

a. Income – The household income of a SFHP manufactured home lot tenant shall not exceed the defined Income Ranges for a 3 person household, as set forth in Section 6, regardless of the household size of the SFHP tenant.

b. Liquid Assets – If the SFHP tenant has liquid assets exceeding \$25,000, additional income shall be imputed at the rate of 20% of the liquid assets exceeding \$25,000. This imputed income shall be added to the yearly income of the SFHP tenant for the purpose of determining income eligibility. Liquid assets include cash, cash equivalents, stocks, bonds, real estate, and other assets readily converted to cash. Liquid assets do not include retirement funds that are not readily accessible without the payment of a penalty, trust funds not controlled by the potential purchaser, personal property such as furniture or automobiles, educational accounts committed to a dependent, or other assets not readily accessible to the purchaser.

9.1.3 A household's eligibility shall have been certified by the City or its agent no more than 90 days prior to a lease being executed for a SFHP rental unit or SFHP rental manufactured home lot.

9.1.4 Use of rent subsidies by tenants – No owner or agent of a rental development subject to SFHP may discriminate against a SFHP tenant for proposing to use federal or other rent subsidies, nor can such subsidies be sued to achieve a required SFHP contract rent.

## **9.2 SFHP Rental Rates**

9.2.1 The monthly rent of a SFHP rental unit ( excluding utility costs to be paid by the tenant) being rented pursuant to a SFHP Agreement shall be at or below the following amounts:

Income Range	Affordable Rent Efficiency/Studio or 1 Bedroom	Affordable Rent 2 Bedrooms	Affordable Rent 3 Bedrooms	Affordable Rent 4 Bedrooms
1	\$346	\$396	\$445	\$495

Income Range	\$577	\$660	\$742	\$825
2				
Income Range	\$750	\$858	\$965	\$1,073
3				

9.2.2 There shall be no side agreements obligating SFHP tenants to pay the property owner for any add-on features or services.

9.2.3 Security deposits may not exceed the sum of two months' rent at the SFHP rental rate for a unit.

### **9.3 Adjustment of SFHP Rental Rates**

9.3.1 Beginning in 2006 and annually thereafter, the Office of Affordable Housing shall review and adjust the Affordable Rent in each Income Range and for each unit size by the same percentage change as the percentage change in Area Median Income from the previous 12 months.

9.3.2 The Office of Affordable Housing shall publish new Affordable Rents immediately upon adjustment and, within 30 days, shall report to the Governing Body the new Affordable Rents.

9.3.3 Beginning in 2007 and every two years thereafter, the Office of Affordable Housing shall review the factors and assumptions used to determine housing expense ratios in Section 9.5 and shall report to the Governing Body on whether or not housing expense ratios associated with the rental rates, as adjusted for changes in AMI, are still at or below 30% for households within each applicable Income Range. The Office of Affordable Housing may make recommendations to the Governing Body to amend the SFHP ordinance at any time if it determines that the housing expense ratios associated with the affordable rents exceed 30% due to changes in market factors. Nothing herein shall prevent the Governing Body from amending the SFHP ordinance without such a recommendation from the Office of Affordable Housing.

**9.4 Establishment of SFHP Rental Rates** - SFHP rents are established to maintain a target housing expense ratio of no more than 30% for the assumed household size with the lowest household income in each applicable Income Range.

**9.5 Factors in Determining Housing Expense Ratios** - The following assumptions are used in the determination of housing expense ratios:

- a. Assumed household sizes:

<i>Unit Size</i>	<i>Assumed household size</i>
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Studio or 1 Bedroom	1 person
2 Bedroom	2 person
3 Bedroom	3 person
4 Bedroom	4 person

(Note: These assumed household sizes are for determination of housing expense ratios only. Minimum household sizes are contained in Section 8.1)

**9.6 Sample Determination of Housing Expense Ratio** - For purposes of example, following are steps used to determine the housing expense ratio for a 2-bedroom rental unit and a 2-person household in Income Range 2:

- a. Determine Unit Size: 2 Bedroom
- b. Determine Applicable Income Range: Income Range 2 (more than 50% but not more than 65%)
- c. Determine Affordable Rent: \$660
- d. Determine Assumed Household size: 2 person
- e. Determine median income for 2 person household (as published by HUD):  
\$52,800
- f. Determine lowest income for applicable Income Range:  $50\% \times \$52,800 =$   
\$26,400
- g. Determine monthly income:  $\$26,400 / 12 = \$2,200$
- h. Determine housing expense ratio:  $\$660 / \$2,200 = 30\%$

**9.7 SFHP Manufactured Home Lot Rental Rates**

- a. SFHP manufactured home lot rents are established as 30% of the rent of a 3 bedroom rental unit. SFHP manufactured home lot rents apply to all households, regardless of size, with a household income within each applicable Income Range.
- b. Rents of SFHP manufactured home lots being leased to an eligible tenant pursuant to a SFHP agreement shall be at or below the following amounts:

Income Range	Affordable Manufactured Home Lot Rent
--------------	------------------------------------------

Income Range 1	\$134
Income Range 2	\$223
Income Range 3	\$290

c. Beginning in 2006 and annually thereafter, the Office of Affordable Housing shall review and adjust the Affordable Manufactured Home Lot Rent in each Income Range by the same percentage change as the percentage change in Area Median Income from the previous 12 months.

d. The Office of Affordable Housing shall publish new Affordable Manufactured Home Lot Rents immediately upon adjustment and, within 30 days, shall report to the Governing Body the new Affordable Manufactured Home Lot Rents.

## **9.8 Required Number of SFHP Rental Units in a Development**

9.8.1 Fifteen percent of the total number of dwelling units and SFHP manufactured home lots offered for rent in an SFHP development shall be SFHP rental units or SFHP rental manufactured lots, as follows:

a. Five percent (5%) of the total dwelling units or manufactured home lots shall be rented at or below the affordable rent for Income Range 1.

b. Five percent (5%) of the total dwelling units or manufactured home lots shall be rented at or below the affordable rent for Income Range 2.

c. Five percent (5%) of the total dwelling units or manufactured home lots shall be rented at or below the affordable rent for Income Range 3.

9.8.2 If an applicant exceeds the percentage in Income Range 1 or Income Range 2 as set forth above, the requirement in any higher income range may be reduced by the same percentage.

9.8.3 The whole number resulting from this calculation shall be the number of SFHP rental units required to be constructed or SFHP manufactured home lots to be created and the remaining fraction may be satisfied with the fractional unit fee described in Section 9.9.

9.8.4 In the event that two or fewer SFHP rental units or SFHP manufactured home lots are required, the SFHP rental units or manufactured home lots shall be affordable to Income Range 1 or Income Range 2.

**9.9 Providing “Fractions” of Units** – If the calculation described in Section 9.8 results in a fraction, the whole number resulting from the formula shall be the number of SFHP units required to be constructed or created and the remaining fraction may be satisfied with the fractional unit fee. The fee shall be the base fractional fee multiplied by remaining fraction. The base fractional fee shall be half of the Affordable Home Price of a 3 Bedroom Unit in Income Range 2. This contribution is not and shall not be used as an alternate means of compliance. The contribution shall be made prior to recording the SFHP Agreement.

**9.10 Minimum Structural Requirements for SFHP Rental Units** - SFHP rental units shall be built to conform to local, state and federal laws, and these additional criteria concerning design, equipment and physical features:

9.10.1

a. Minimum Bathrooms and Floor Area - SFHP rental units shall be constructed according to the minimum requirements for bathrooms and square footage of habitable residential space described below:

Unit Type	Minimum Bathrooms	Minimum Square
Efficiency/Studio	1	700 square feet
1 Bedroom	1	850 square feet
2 Bedrooms	1	1000 square feet
3 Bedrooms	2	1150 square feet
4 Bedrooms	2	1250 square feet

Minimum floor areas of habitable residential space include partitions, closets, heated utility rooms, halls and stairways but exclude attics, porches, unfinished basements, garages and unheated storage space.

b. The applicant may request smaller minimum sizes if it demonstrates, subject to confirmation by the Office of Affordable Housing, that the sizes above are larger than the sizes of the non-SFHP rental units.

9.10.2 Equipment and equipment hookups – Each unit shall, at a minimum, include (a) a new kitchen range and refrigerator, (b) hookups for a clothes washer, dryer or a laundry on site which charges no more than prevailing market prices for use of washers and dryers, (c) central heating systems. Resistance electric heating is not permitted unless the applicable units have exceptionally low heat loads and the City approves this alternate in the SFHP Agreement or otherwise in writing.

9.10.3 Design and location – The proposed design and location of the affordable units shall be reviewed and approved by the Office of Affordable Housing in order to achieve spatial integration with, dispersion throughout and similar exterior architectural and landscaping appearance with other units in the development.

#### **9.11 Required Mix Of Unit Types**

9.11.1 So that SFHP Rental Units will serve a wide range of household sizes, the mix of unit types in for-rent SFHP developments shall match the mix of non-SFHP unit types.

**9.12 Marketing To and Certifying Tenants for SFHP Rental Units**– SFHP developers shall market SFHP rental units or SFHP manufactured home lots in accordance with the following requirements:

9.12.1 An SFHP rental unit may not be marketed and leased to a household which has an income higher that exceeds the defined Income Ranges as set forth in Section 6.

9.12.2 An SFHP Rental Unit may not be marketed and leased to a household which is smaller than the minimum household size established in Section 9.1 unless a smaller household size is approved by the Office of Affordable Housing.

9.12.3 Marketing Materials – Brochures, advertisements and other marketing materials shall clearly state the policies of the SFHP program with regard to pricing of SFHP rental units and tenant eligibility (both of the program in general and the eligibility to buy specific homes).

9.12.4 Leases– Rental property owners and SFHP tenants may execute only leases which are approved for form by the City and which must be provided to and explained to the renter prior to execution of the contract. The disclosure form and lease language must prevent any household



that leases a SFHP rental unit from subleasing the unit without the written approval of the City, and describe other terms of occupancy as regulated herein.

**9.13 Allocation of SFHP Units**– SFHP is established to benefit all residents of the City and, as such, it is the policy of the City that all eligible potential renters have the same opportunity to lease SFHP rental units or SFHP manufactured home lots.

9.13.1 For SFHP developments for which the City or its agent expects immediate effective demand to outstrip the supply, the city or its agent shall establish and maintain an equitable process for allocating rights to lease the homes or manufactured home lots. In developments where the city or its agent has established such a process, the developer shall be required to follow the process when selecting SFHP tenants. For developments other than those described above, the developer shall establish and maintain an equitable process of marketing rental units and manufactured home lots, including waiting lists where demand exceeds supply.

9.13.2 Prior to executing a lease for any SFHP Rental Unit or SFHP manufactured home lot, the prospective SFHP tenant shall be certified as meeting the SFHP requirements described in Section 9.1 by the city or its agent.

**9.14 Monitoring by the City of SFHP Leases** – SFHP Agreements involving rental housing shall provide for annual monitoring and certification of leased SFHP units by the City or its agent as follows:

9.14.1 Monitoring – The City shall have the right to inspect and photocopy all accounting and occupancy records with regard to any SFHP rental unit. It shall further have the right to contact and interview any SFHP tenant with regard to compliance issues.

9.14.2 Recordkeeping – Owners of SFHP rental properties shall keep adequate records of all payments of rent and data concerning tenants, in accordance with standard practices of the rental housing industry. If disputes arise over what constitutes adequate recordkeeping, the City under its SFHP Agreement shall have the right to require owners to adopt financial and information management practices that are recommended by a certified public accountant and/or property management manuals published by the Institute of Real Estate Management.

9.14.3 Access to records – The City shall have access to all relevant financial and tenant information records during normal business hours, upon providing verbal or written notice and least two business days prior to a proposed monitoring visit.

9.14.4 Certification – Upon completion of this annual monitoring activity, the City shall certify that the property owner is in compliance with the SFHP Agreement, or shall issue findings of non-compliance.

9.14.5 Noncompliance – Upon findings of noncompliance with the SFHP Agreement, the procedures set forth in Section 7.11 shall apply.

**9.15 Vacancies and Changes in Income and Household Size After Occupancy -** The following policies and procedures shall be included in the lease provisions for SFHP tenants:

9.15.1 Property owners must ensure that tenants are eligible upon initial execution of a lease. If an SFHP tenant vacates the SFHP rental unit or manufactured home lot, the property owner must rent the unit, or another unit, to a tenant in the same Income Range.

9.15.2

a. The property owner shall not be required to certify the income of an SFHP tenant after the initial execution of the lease but may do so at his choosing no more than once every 12 months. If the income of the household has increased to a level at which the household is no longer qualified as a SFHP tenant, the property owner shall allow the tenant to continue to rent the unit or another comparable unit on the property, but the property owner may increase the rent to the prevailing rent for that type and quality of unit on the property. In this instance, the property owner must rent the unit or another unit to a tenant in the same Income Range that the household was in at the time of the initial execution of the lease.

b. If the income of a SFHP tenant has increased so that its household income falls within another Income Range, the property owner may adjust the rent accordingly but must remain in overall compliance with the SFHP Agreement with respect to the number of required SFHP Rental Units in each Income Range and the required mix of unit types.

9.15.3 If the household size of a SFHP tenant increases, the follow provisions will apply:

a. If the SFHP tenant is eligible for a larger unit, the SFHP tenant may elect to move into the next available unit of appropriate size.

b. The SFHP tenant's rental rate will be adjusted in accordance with the size of the unit being occupied.

9.15.4 Nothing in these procedures shall be construed so as to penalize qualifying renters for changes in family size.

**9.16 Term of Compliance** - Rental housing developments subject to SFHP (or portions thereof completed and occupied at different times) shall maintain required occupancy and rental rates in SFHP units for a period of 20 years after the date of issuance of a certificate of occupancy for the entire development of portions thereof. This requirement shall be made applicable to successors in title, if any, by means of a deed restriction.

**9.17 Allowed and Disallowed Use of Subsidy** - Rental rates charged for the SFHP Units may not be achieved by use of rent subsidies from any source other than the property owner, so that, given the scarcity of rent subsidy funds for affordable housing, all SFHP applicants and SFHP developers will be treated equally and fairly. However SFHP developers may use any type of capital development subsidy (grants, low-interest loans, tax credits, etc) to achieve the required rents.

**9.18 Simplified Compliance – Low Income Housing Tax Credit Projects** – Notwithstanding any other terms of SFHP or a SFHP Agreement, if rental units in a SFHP development have been awarded tax credits under the federal Low-Income Housing Tax Credit program, such units shall be deemed to comply with all tenant certification and rental requirements of the SFHP program, so long as the project is in good standing with regard to the monitoring standards of that program. For such projects in good standing, the only monitoring required by the City shall be delivery to the Office of Affordable Housing (within 10 days of their receipt) of all copies of the monitoring agency's reports and correspondence with regard to compliance monitoring.

## **10. TIMING OF COMPLIANCE**

Require SFHP Units or alternate means of compliance shall be provided in a timely fashion, as follows:

**10.1 Timing of Providing SFHP Units for Sale** – In a SFHP development, completed SFHP homes or SFHP manufactured home lots shall be sold in proportion to the sale of unimproved lots or non-SFHP units. This principle shall be reflected in each SFHP Agreement providing for-sale units.

**10.2 Timing of Providing Rental Units** – In a SFHP development, the required number of SFHP rental units or SFHP rental manufactured home lots shall be leased as each building or phase of the project is offered for rent. A phase shall be defined as a group of units which are completed and ready for occupancy within a period of one year. This principle shall be reflected in each SFHP agreement providing for on-site rental housing or rental manufactured home lots.

**10.3 Earlier Delivery** - A developer may sell or lease affordable units earlier than required herein.

**10.4 Timing of Alternate Means of Compliance** – In developments where the governing body has approved an in-lieu contribution as an alternate means of compliance, the in-lieu contribution shall be due and deliverable after approval of the development request and before

the recordation of the SFHP agreement. An applicant may propose an alternative to this timing requirement as part of the request for alternative means of compliance, subject to approval from the governing body.

## **11. ALTERNATE MEANS OF COMPLIANCE**

### **11.1 Criteria for Allowing Alternate Means of Compliance**

11.1.1 One of the goals and purposes of the SFHP program is to foster economic integration by requiring that developers provide required SFHP units and manufactured home lots on the property proposed for development. However, it is recognized that at times this approach may not be feasible do to extreme hardship as defined. In this event, the applicant may seek permission from the governing body to comply with the SFHP through an alternate means of compliance

11.1.2 Any approval of an alternate means of compliance must be based on a finding that the purposes of this chapter would be better served by implementation of the proposed alternative(s). In determining whether the purposes of this chapter would be better served under the proposed alternative, the city shall consider:

a. whether implementation of an alternative would overly concentrate SFHP units within any specific area and if so, the City must reject the alternative unless the undesirable concentration of the SFHP units is offset by other identified benefits that flow from implementation of the alternative in issue; and

b. the extent to which other factors affect the feasibility of prompt construction of the SFHP units on the property, such as costs and delays, the need for appraisal, site design, zoning, infrastructure, clear title, grading and environmental review.

**11.2 Allowable Alternate Means of Compliance** - The City, in its sole discretion, may select one or a combination of the following alternative means of compliance: off –site construction, cash payment in lieu of constructing or creating the required SFHP units or manufactured home lots, or dedication of land suitable for construction or creation of inclusionary units of equivalent or greater value than would be required for onsite construction.

**11.3 Determination of In-Lieu Contribution Values** -- The value of the fee in lieu contribution shall be determined by multiplying the number of affordable units required (including any fraction of a unit) by the Affordable Home Price for a 3-Bedroom Unit for Income Range 2.

**11.4 Waiver of SFHP requirements** -- The governing body, at its sole discretion, may grant a waiver of the SFHP requirements. Any approval of a waiver must be based on the finding that the condition of extreme hardship, as defined, cannot be sufficiently alleviated by the alternate means of compliance described in this Section.

11.4.1 In requesting a waiver of SFHP requirements, the developer shall provide detailed information regarding the proposed development to demonstrate the condition of extreme hardship.

## **12. RESTRICTIONS ON RESALES OF AFFORDABLE FOR-SALE UNITS**

The following terms and conditions restricting the resale of SFHP Homes shall be incorporated in the documentation of each sale of a SFHP Home:

**12.1 Purpose** - In recognition of the consideration granted by the City to SFHP developers, the City shall impose resale controls which are designed to achieve the following purposes:

12.1.1 Reducing the potential for windfall profits by an owner-occupant

12.1.2 Recapturing any such windfall profits for use in an approved housing trust fund that finances affordable housing programs in Santa Fe.

12.1.3 Providing incentives for owner-occupants to resell to lower-income households, which are most in need of affordable housing.

12.1.4 Maintaining the affordability of SFHP homes to subsequent buyers to a reasonable extent, while considering the sellers' rights to reasonable returns on equity.

12.1.5 Preventing speculative profits on SFHP homes gained from renting them to another household (Any rental homes or homes intended for owner occupancy must be approved by the City in writing.)

**12.2 Required Resale Control Mechanisms** -- The City will require that the following mechanisms be used to control the resale of a SFHP home or SFHP manufactured home lot:

12.2.1 Mortgage liens – Each SFHP Home and SFHP Manufactured Home Lot which is sold at an effective price below market value shall have a second mortgage lien which is payable to the City or its agent. Such a lien will be subordinate to any lien for purchase financing or home equity financing, whether a first, second, third, or other subordinate loan. It will be non-amortizing, carry a rate of zero percent interest and be due only upon resale or conversion of the property to a unit that at the time of resale would not qualify as a SFHP unit. If a unit is sold at a loss, the loan may, at the City's sole discretion, be forgiven to the extent that sale proceeds are insufficient to pay all superior liens and then the City lien. The lien will be assumable by a buyer certified as meeting the eligibility requirements pursuant to Section 8.1.2. Such lien will also be expressly and automatically subordinate to any lien for home equity financing, so long as the lender certifies to the City in writing within 30 days after making the loan that the total of all recorded debt on the property (including the home equity loan and the city loan) does not exceed 95% of the appraised value of the property.

a. The amount of the lien will be the difference between the SFHP price and the

initial market value of the SFHP home or SFHP manufactured home lot. In order to provide additional equity to the SFHP buyer at the time of purchase, the initial market value shall be determined as 95% of the appraised value of the SFHP home or SFHP manufactured home lot.

b. Shared appreciation requirements – The City will require a separate agreement which will entitle the City to a share of the appreciation realized in any resale. The city's share of appreciation, if any, will be in proportion to the ratio of the SFHP lien to the initial market value at the time of the SFHP buyer's initial purchase. The value of improvements shall be deducted from the gross appreciation pursuant to Section 13.4. For purpose of example, following are steps used to determine the city's share of appreciation:

1. Determine SFHP Affordable Home Price (example: 3 Bedroom Home in Income Range 3): \$142,000
2. Determine appraised value of SFHP home: \$220,000
3. Determine initial market value of SFHP home:  $\$220,000 \times 95\% = \$209,000$
4. Determine amount of lien:  $\$209,000 - \$142,000 = \$67,000$
5. Determine city's share of appreciation (proportion of lien to initial market value):  $\$67,000 / \$209,000 = 32\%$

12.2.2 Right of first refusal requirements – In any lien described in Section 13.2.1 the City shall also require the right of first refusal to repurchase the home for a formula price, or to assign such right to its agent.

12.2.3 The SFHP developer shall pay the City's agent for an appraisal to determine the value of the lien.

### **12.3 Deductions from gross appreciation for improvements**

12.3.1 The SFHP homebuyer may deduct from the gross appreciation the cost of improvements made to the home that add to the value of the home or prolong its useful life. Improvements that are no longer part of the home shall not be deducted from gross appreciation. Repairs that maintain the home in good condition but do not add to its value or prolong its life shall not be

deducted from gross appreciation. Examples of improvements that may be deducted from gross appreciation include, but are not limited to:

**Additions**

Bedroom  
Bathroom  
Deck  
Garage  
Porch  
Patio

**Lawn & Grounds**

Landscaping

Driveway

Walkway

Fence

Retaining wall

Irrigation system

Furnace  
Duct work  
Central humidifier  
Filtration system

**Plumbing**

Septic system  
Water heater  
Soft water system  
Filtration system

**Interior**

**Improvements**

Built-in appliances  
Kitchen modernization  
Flooring  
Wall-to-wall carpeting

**Insulation**

Attic  
Walls, floor  
Pipes, ductwork

**Miscellaneous**

Storm windows, doors

New roof

Central vacuum

Wiring upgrades

Security system

**Heating & Air Conditioning**

Heating system  
Central air conditioning

12.3.2 The SFHP homebuyer must provide the Office of Affordable Housing with receipts and other records for all improvements that are deducted from the gross appreciation.

### **13. INCENTIVES FOR SFHP DEVELOPERS**

The following development incentives do not apply to applications for residential developments located outside the City limits that are requesting the extension of or connection to City utilities. Projects located outside the City limits may be entitled to incentives set forth in the applicable land use regulations.

**13.1 Fee Waivers** Fees for SFHP developments subject to and complying with the SFHP requirements shall be waived or reduced as follows:

13.1.1 Development review and building permit fees shall be waived or reduced proportionately to the number of SFHP units certified by the Office of Affordable Housing.

13.1.2 Impact fees as set forth in Section 14-8.14 SFCC 1987 and utility expansion charges as set forth in Chapters 22 and 25 SFCC 1987 shall be waived or reduced at the time of application for SFHP units.

**13.2 Density Bonus** -- Any developer who is subject to and complying with SFHP shall be entitled to an additional density bonus of 15 percent over the density allowed by the zoning district.

13.2.1 A density bonus is the right to build the described percentage of residential units, in addition to those that are otherwise allowed by the zoning district, in accordance with the following standards and procedures

a. Base units allowed shall mean the total number of units that would otherwise be allowed by the zoning district.

b. In calculating any bonus unit(s), the base units allowed in the development shall be multiplied by 15 percent. If the result is other than a whole number, the number shall be rounded down if less than 0.5, and rounded up if 0.5 or more.

c. Any such bonus will not require a General Plan amendment or approval by the Governing Body unless appealed pursuant to §14-3.17 SFCC 1987.

d. Except where the Planning Commission may be authorized to grant a variance or waiver as set forth in Chapter 14, such a density increase shall not negate,



1 supersede or limit other City code provisions that limit the number of units that can be  
2 built on the site.

3 **14. SEPARABILITY**

4 The provisions of these administrative procedures are separable and the invalidity of any  
5 part of these provisions shall not affect the validity of the rest of these provisions.

6

7